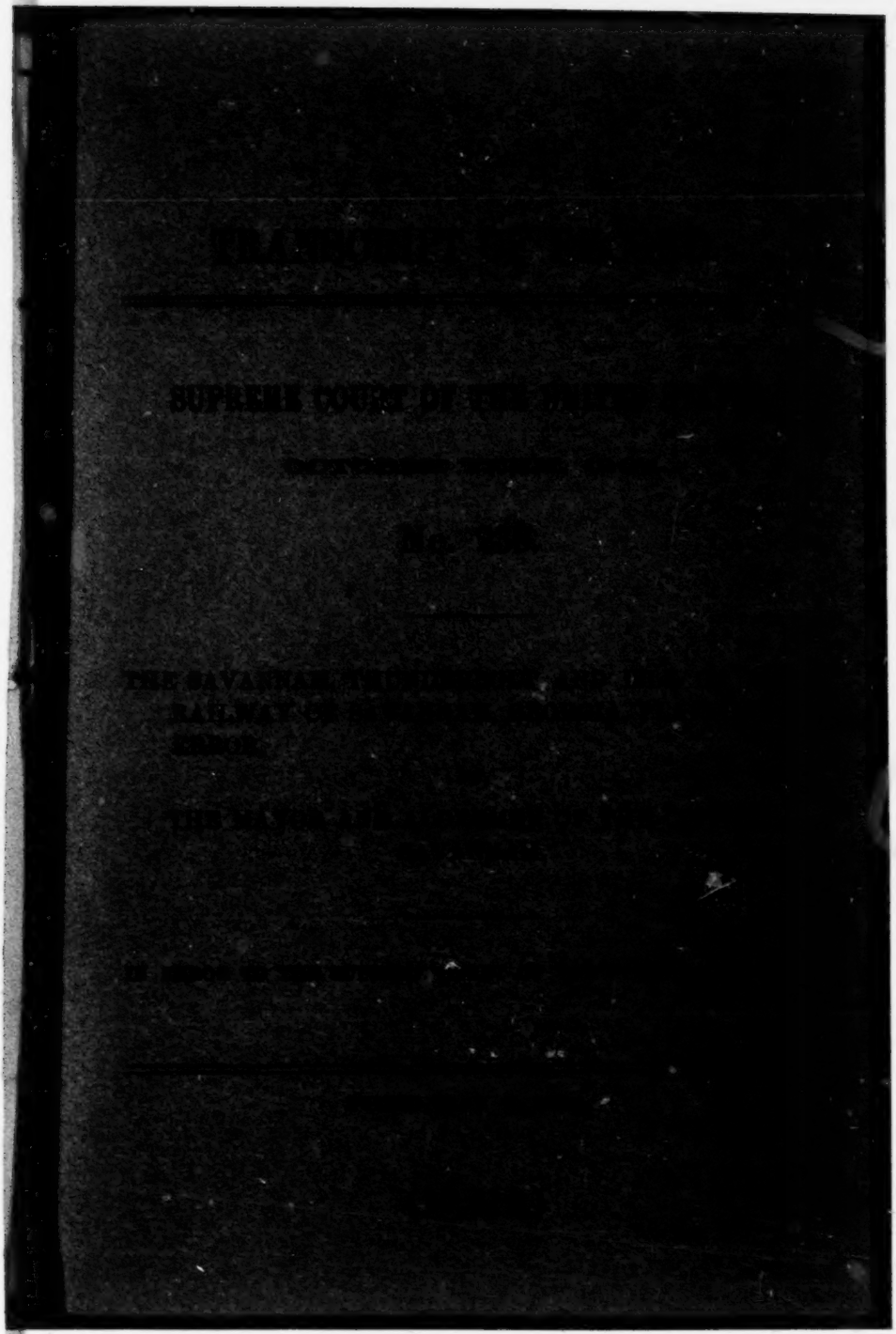

(19,318.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 238.

THE SAVANNAH, THUNDERBOLT AND ISLE OF HOPE RAILWAY OF SAVANNAH, GEORGIA, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH.

IN ERROR TO THE SUPREME COURT OF THE STATE OF GEORGIA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	3	2
Proof of service of citation	4	2
Petition for writ of error	5	3
Bond on writ error	7	4
Assignment of errors	9	5
Bill of exceptions from Chatham superior court	11	6
Statement	11	6
Assignment of errors	11	7
Designation of necessary parts of record	13	8
Judge's certificate	13	8
Clerk's certificate	14	9
Transcript of record from Chatham superior court	15	9
Petition	15	9
Restraining order	17	11
Summons	18	12
Answer to rule to show cause	18	12

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1904.

	Original.	Print
Answer to petition	19	13
First amendment to petition	23	16
Second amendment to petition	27	20
Exhibit A—Contract with city, November 4, 1897	29	21
Order refusing injunction, &c.	39	29
Amendment to answer	40	29
Verdict	40	30
Judgment	40	30
Motion for new trial	41	31
Brief of the evidence	43	32
Testimony of H. M. Lofton	43	32
Tax returns	44	33
Contract, November 3, 1897, &c.	45	34
Testimony of James H. Johnston	57	43
Charter of railway	61	46
Statement of facts	63	47
Judge's certificate to evidence, &c.	64	48
Order denying new trial	64	48
Clerk's certificate	64	48
Opinion	65	49
Judgment	68	51
Clerk's certificate	69	51

1 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the supreme court of the State of Ga., Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said supreme court of the State of Georgia, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, plaintiff, and The Mayor and Aldermen of the City of Savannah, defendant, wherein was drawn in question the validity of an authority exercised under said State, on the ground of its being repugnant to the Constitution of the United States and the decision being in favor of such validity, and wherein was drawn in question the construction of clauses of the Constitution of the United States and the decision was against the right or exemption specially set up or claimed under such clauses of the Constitution, a manifest error hath happened, to the great damage of the said The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, plaintiff, in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have same at Washington within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according
2 to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this first day of April in the year of our Lord one thousand nine hundred and four.

[Seal U. S. Circuit Court, N. D. Georgia.]

O. C. FULLER,
Clerk of the Circuit Court of the United States for the Northern District of Georgia.

Allowed by
T. J. SIMMONS,
Chief Justice Supreme Court of Ga.

Filed in office April 1st 1904.

Z. D. HARRISON,
Clk S. C. Ga.

3 UNITED STATES OF AMERICA,
Fifth Circuit, Southern District of Georgia, Eastern Division.

To the Mayor and Aldermen of the City of Savannah:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Georgia, wherein The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Thomas J. Simmons, chief justice of the supreme court of the State of Georgia, this first day of April in the year of our Lord one thousand nine hundred and four.

T. J. SIMMONS,
Chief Justice Supreme Court of Georgia.

Due and legal service of the foregoing citation acknowledged this —— —, 1903.

——— ———,
Att'y of Def't in Error.

4 [Endorsed:] In the supreme court of Georgia, March term, 1904. The Savannah Thunderbolt and Isle of Hope R'w'y of Savannah Ga. *vs.* The Mayor & Aldermen of Savannah. Citation. Filed in office April 12, 1904. Logan Bleckley D. C. S. C. Ga. David C. Barrow, att'y for pl't'ff in error.

STATE OF GEORGIA,
County of Chatham.

On this 5th day of April 1904 personally appeared before me, a notary public in and for said county, David C. Barrow, and made oath that he delivered a copy of within citation, and a copy of the writ of error therein named, to William Garrord, whom deponent says is the attorney at law for The Mayor and Aldermen of Savannah, Ga.

DAVID C. BARROW.

Sworn to and subscribed before me on this 11th day of April, 1904.

T. LLOYD OWENS,
Notary Pub., Chat. Co., Ga.

GEORGIA, }
Chatham Co. }

On this 11th day of April 1904 personally appeared before me, a notary public in and for said county, David C. Barrow, and made oath that be delivered a copy of within citation to Herman Myers, mayor, of the city of Savannah, Ga.

DAVID C. BARROW.

Sworn to and subscribed before me

[Seal of T. Lloyd Owens, Notary Public, Chatham Co., Ga.]

T. LLOYD OWENS,
Notary Public, Chat. Co., Ga.

5 In the Supreme Court of the State of Ga.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RAILWAY of Savannah, Georgia,
v.
THE MAYOR AND ALDERMEN OF SAVANNAH. } Injunction.

To the Honorable Thomas J. Simmons, chief justice of the State of Georgia:

And now comes The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, the plaintiff in error in the above entitled case and says that on or about, the 2nd day of April, 1902, this court entered judgment herein in favor of the defendant and against this plaintiff, in which judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

The said supreme court of the State of Georgia is the highest court of the State of Georgia in which a decision in said suit can be made, and said judgment so rendered was against this plaintiff, and was a final judgment in said cause.

In said cause and in the judgment of the said supreme court of the State of Georgia there was drawn in question the validity of an authority exercised under the State of Georgia on the grounds of its being repugnant to the Constitution of the United States and the decision was in favor of such validity, and there was drawn in question the construction of clauses of the Constitution of the United States and the decision was against the right or exemption specially set up or claimed under such clause- of the said Constitution, and manifest error hath happened, to the great damage of the said The Savannah, Thunderbolt & Isle of Hope Railway of Savannah,

6 Georgia, plaintiff in error.

Wherefore, this plaintiff prays for the allowance of a writ of

error from the Supreme Court of the United States to the supreme court of the State of Georgia, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this case, duly authenticated, may be sent to the said the Supreme Court of the United States.

DAVID C. BARROW,
Attorney for the S., T. & I. of H. R'y of Savannah, Georgia.

—— ——, *Of Counsel.*

Filed in office Ap'l 1, 1904.

Z. D. HARRISON,
C. S. C. Ga.

7 UNITED STATES OF AMERICA,
Fifth Circuit, Southern District of Georgia,
Eastern Division.

Know all men by these presents that we, the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, as principal, and Henry Parsons, as surety, are held and firmly bound unto the Mayor and Aldermen of the City of Savannah in the full and just sum of four thousand dollars ($4,000.00), to be paid to the said Mayor and Aldermen of the City of Savannah, its certain attorney, successors or assigns; to which payment well and truly — be made, we bind ourselves and our successors jointly and severally by these presents:

Sealed with our seals and dated at Savannah, Georgia, this 30th day of March, 1904.

Whereas lately at a term of the supreme court of the State of Georgia, in a suit depending in said court between The Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, plaintiff, and The Mayor and Aldermen of the City of Savannah, defendant, a judgment was rendered against the said The Savannah, Thunderbolt and Isle of Hope Railway of Savannah; and the said The Savannah, Thunderbolt and Isle of Hope Railway of Savannah, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said The Mayor and Aldermen of the City of Savannah, citing and admonishing it to be and appear at the Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said The Savannah, Thunderbolt and Isle of Hope Railway of Savannah shall prosecute its writ of error to effect and shall answer all dam-

ages and costs if they fail to make their plea good, then the
8 above obligation to be void, else to remain in full force and virtue.

SAVANNAH, THUNDERBOLT AND ISLE OF HOPE R. R.,
By G. W. J. BALDWIN, [L. S.]
President, Principal.
HENRY PARSONS, *Surety.* [L. S.]

Signed and sealed in the presence of
RAIFORD FALLIGANT,
[SEAL.] *Notary Public, Chatham County, Georgia.*

UNITED STATES OF AMERICA,
Fifth Circuit, Southern District of Georgia,
Eastern Division.

Personally appeared Henry Parsons, who being duly sworn says that he is worth four thousand ($4000.00) dollars over and above all just debts and liabilities and exemptions.

HENRY PARSONS.

Sworn to and subscribed before me this thirtieth day of March, 1904.

RAIFORD FALLIGANT,
Notary Public, Chatham County, Georgia.

Approved:
T. J. SIMMONS,
Chief Justice Supreme Court of Ga.

Filed in office Ap'l 1, 1904.
Z. D. HARRISON, *C. S. C., Ga.*

9 In the Supreme Court of the State of Georgia.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RAILWAY of Savannah, Georgia,
v.
THE MAYOR AND ALDERMEN OF THE CITY OF SAVANNAH. } In Equity.

And now comes the plaintiff in error, The Savannah, Thunderbolt and Isle of Hope Railway, of Savannah, Georgia, and files, in connection with its petition for a writ of error the following assignments of error which it intends to urge:

1. The court erred in sustaining said tax ordinance for the reason that said tax ordinance is repugnant to the fourteenth amendment

of the Constitution of the United States, in that it denies to the plaintiff in error the equal protection of the laws, by being an arbitrary classification by the taxing power and being a discrimination against the said plaintiff, in that it did not apply to other persons similarly situated and using the streets under like conditions.

2. The court erred in refusing to enjoin the enforcement of said tax ordinance upon the ground that it was void, because it impaired the obligation of the contract between the Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, and the mayor and aldermen of the city of Savannah made November 4th, 1897, and amended in April and July, 1898, set forth in the record.

3. The court erred in refusing to hold and decide that the said tax ordinance of the mayor and aldermen of the city of Savannah was an authority exercised under the State of Georgia and was void upon the ground that it was repugnant to that clause of the Constitution of the United States which prohibits any State from impairing the obligation of a contract.

4. The court erred in refusing to enjoin the enforcement of said tax ordinance upon the ground that it included Whitaker
10 and Bolton streets, the land for which had in part been conveyed to the mayor and aldermen by the railway for the purposes of streets, and at the same time the easement for railroad purposes over said land was expressly reserved to the railway, this being done by contract with the mayor and aldermen, the obligation of which contract the plaintiff contends the ordinance impairs.

5. The court erred in refusing to enjoin the enforcement of said tax ordinance notwithstanding the objection that there was no law in the State of Georgia which authorized the municipal government of a city to levy any license tax or business tax upon a railroad company, nor to compel a railroad company to pay for the privilege of doing business, said ordinance for this reason being an attempt to take the plaintiff's property without due process of law and thereby in violation of the Constitution of the United States.

DAVID C. BARROW,
Attorney for Plaintiff in Error.

Filed in office Ap'l 1, 1904.

Z. D. HARRISON, *C. S. C., Ga.*

11 GEORGIA,
Chatham County.

Be it remembered that on July 12th, 1901, there came on to be tried in the superior court of said State and county, before his honor, Robert Falligant, the judge of said court then and there presiding and a jury duly empaneled for that purpose, the case of The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, *v.* The Mayor and Aldermen of Savannah. After the evidence was all

submitted, the judge charged the jury to find a verdict for the defendant, the charge being simply and only an express instruction to the jury to find a verdict for the defendant. The jury accordingly found a verdict for the defendant. Thereupon a decree was entered.

Afterwards, to wit, on July 19th, 1901, during the same term of the court at which said verdict was found and said decree entered and within thirty (30) days from the date of said verdict and decree the said plaintiff, The Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Ga., filed its motion for a new trial in said case, and on July 20th, 1901, duly and legally filed its brief of evidence in said case within thirty (30) days from the date of said verdict and decree. The brief of evidence was duly and legally approved by the judge. The grounds of the motion for a new trial were duly and legally approved by the judge.

On August 10th, 1901, during the same term of the court, the said motion for a new trial came on regularly to be heard before the judge in its order, and on said date last mentioned was heard and determined and a new trial refused.

To this order and judgment of the court refusing a new trial the Savannah, Thunderbolt & Isle of Hope Railway of Savannah then and there excepted, and now excepts and assigns the same as error upon the following grounds: First. The court erred in overruling the first ground of the motion for a new trial, which is, that the verdict is without evidence to support it. Second. The court erred in overruling the second ground of the motion for a new trial,
12 which is, that the verdict is contrary to law. Third. The court erred in overruling the third ground of the motion for a new trial, which is, that the court erred in instructing a verdict for the defendant. Fourth. The court erred in overruling the fourth ground of the motion for a new trial, which is, that said verdict and decree for the defendant are erroneous for the reason that the evidence showed that other railroads using the streets of Savannah, by permission from council, for local business, and carrying on therein a strictly local business, were not taxed on their business and were not charged anything for the privilege of using the streets; the evidence thus making it clear that the said ordinance was not uniform on all individuals of the same class, and was consequently a void ordinance, denying to the plaintiff the equal protection of the laws and being violative of the 14th amendment to the Constitution of the United States. Fifth. The court erred in overruling the fifth ground of the motion for a new trial, which is, that the said verdict and judgment are erroneous for the reason that the evidence showed that a contract existed between the said railway and the said city of Savannah, by which the privilege of using the streets of Savannah was granted by the city to the railway and paid for by the railway, and this ordinance is an impairment of the obligation of that contract, in that, it seeks to compel the said railway to pay for the privilege of using the same streets which it had already bought and paid for. Sixth. The court erred in overruling the sixth ground of

the motion for a new trial, which is, that the said verdict and judgment are erroneous for the reason that Whitaker and Bolton streets are included in the mileage which is charged for, while the evidence shows that a portion of Whitaker and Bolton streets were conveyed to the city by the railway and the right to the use for railway purposes reserved. Seventh. The court erred in overruling the seventh ground of the motion for a new trial, which is, that the said verdict and decree are erroneous for the reason that there is no law in the State of Georgia which authorizes the municipal government of any city to levy any license tax or business tax upon a railroad company of any kind nor to compel a railroad company of any kind to pay for the privilege of doing business in said city; said ordinance for this reason being void as an attempt to take the plaintiff's property without due process of law and being repugnant to the 14th amendment of the Constitution of the United States.

13

And the said Savannah, Thunderbolt & Isle of Hope Railway assigns error upon each of the above grounds.

The Savannah, Thunderbolt & Isle of Hope Railway specifies as material to a clear understanding of the errors complained of: First. The original petition of the plaintiff and the two amendments thereto. Second. The answer of the defendant to the rule to show cause. Third. The answer of the defendant to the petition, and amendment thereto. Fourth. The order of the judge refusing to grant an injunction. Fifth. The verdict of the jury and the decree of the court thereon. Sixth. The motion for a new trial and the rule *nisi* and entries thereon. Seventh. The order and judgment of the court refusing to grant a new trial. Eighth. The brief of evidence accompanying the motion for a new trial, with all the entries thereon.

And now within thirty (30) days from the date of the decision complained of comes The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, the plaintiff in error, and tenders this its bill of exceptions, and prays that the same may be certified in accordance with the statute, in order that the errors complained of may be corrected.

BARROW & BARROW,
Savannah, Georgia, Attorneys for S., T. & I. of H. Ry.

I do certify that the foregoing bill of exceptions is true and contains all of the evidence and specifies all of the record material to a clear understanding of the errors complained of; and the clerk of the superior court of Chatham county is hereby ordered to make out a complete copy of such parts of the record in said case as are in this bill of exceptions specified and certify the same as such and cause the same to be transmitted to the proper term of the supreme court, that the errors alleged to have been committed may be considered and corrected.

14

Savannah, Ga., August 14, 1901.

R. FALLIGANT,
Judge E. J. C. of Georgia.

GEORGIA,
Chatham County.

Clerk's Office, Superior Court.

I, James K. P. Carr, clerk of said superior court, do hereby certify this instrument in typewriting and writing, to be the true original bill of exceptions filed in this office in said case of "The Savannah, Thunderbolt & Isle of Hope Railway of Savannah *versus* The Mayor and Aldermen of Savannah," a copy of which bill of exceptions remains on file in this office.

In testimony whereof, I have hereunto set my official signature and affixed the seal of said court this 24 day of August, 1901.

[SEAL.] JAMES K. P. CARR,
Clerk Superior Court, Chatham County, Geo.

Due and legal service of the within bill of exceptions and certificate of the judge acknowledged, this August fourteenth, 1901,

SAMUEL B. ADAMS,
Att'y for Def't in Error.

Savannah, Ga.

Indorsed on back: No. 14 eastern. In the supreme court of Georgia. October term, 1901. The Savannah, Thunderbolt & Isle of Hope Railway of Savannah *vs.* The Mayor and Aldermen of Savannah. Original bill of exceptions. Filed in office August 15, 1901. James K. P. Carr, clerk S. C. C. C. Filed in office August 26, 1901. Logan Bleckley, D. C. S. C. Ga.

15 *Transcript of the Record.*

GEORGIA,
Chatham County.

To the superior court of said county:

The petition of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., respectfully showeth:

First. That your petitioner is a railroad corporation, chartered under the laws of the State of Georgia, having its principal office and place of business in the city of Savannah, said State and county, and carrying on the business of a common carrier of freight and passengers over its line of railroad, and located in said State and county and operated by electricity. Part of its line of road is in the city of Savannah and part is within the open country.

Second. That in December, 1893, the municipal authorities of the city of Savannah, passed an ordinance, "to assess and levy taxes and raise revenue for the city of Savannah; for the regulation of certain kinds of business in the corporate and jurisdic-

tional limits of said city, fixing penalties for the violation of the revenue ordnance of said city and for the purposes connected with the taxes and revenue of said city." By the terms of said tax ordinance the following tax was imposed, to wit: "Street railway company for each mile or fraction of a mile of track one hundred dollars. In addition thereto as part of same tax for each and every car employed by such company in the city twenty-five dollars." That under and by virtue of said tax ordinance the municipal authorities of the city of Savannah have imposed upon your petitioner a tax upon its property of nineteen hundred dollars.

Third. Your petitioner has duly and legally made its returns for State taxation, for Chatham County taxes and for taxes due the city of Savannah for the year eighteen hundred and ninety nine, through the comptroller-general's office, in accordance with law. That the returns, as required by law, cover all of petitioner's property, including the property on which the above stated tax
16 is assessed. That the returns made to the comptroller-general show the length of its track mileage in the city of Savannah, in order that the taxes due to said city might be computed, levied and collected according to law.

Fourth. The said tax of nineteen hundred dollars upon petitioner's real estate is illegal and contrary to law. It is assessed without authority of law. It is not assessed and levied according to law providing for the taxation of railroads by municipal authorities. It is not ad valorem. Your petitioner has informed the corporate authorities of the city of Savannah, that it is not liable for the tax imposed.

Fifth. Notwithstanding the fact that this exaction of nineteen hundred dollars is illegal and without any authority of law and notwithstanding the further fact that the said municipal authorities of the city of Savannah have been notified that it is illegal and that your petitioner was not liable to pay said exaction, nevertheless, in violation of law, and of your petitioner's rights, and without any authority, the said corporate authorities of the city of Savannah have issued an execution against your petitioner's property, which they have placed in the hands of the city marshal and have undertaken and are now undertaking to enforce the collection of said sum of money by seizure of petitioner's property for the purpose of sale. Unless an immediate remedy is afforded to your petitioner, it will suffer irreparable loss and damage.

Sixth. Your petitioner waives all discovery from the defendant, and, being remediless at and by the strict rules of the common law, brings to this honorable court, this its equitable petition and prays: (a.) That an injunction do issue restraining the Mayor & Aldermen of the City of Savannah, their officers, servants, agents and employees, from attempting to enforce the collection of the said sum of nineteen hundred dollars or any part thereof, hereinbefore referred to, and commanding them to desist from further attempts to collect any so-

called taxes from your petitioner under said illegal ordinance.
17 (*b.*) That your petitioner may have such other and further relief as the nature of the case may require. (*c.*) That process do issue requiring the said Mayor and Aldermen of the City of Savannah to be and appear at the next term of the superior court, in and for said county, then and there to answer your petitioner's complaint.

BARROW & OSBORNE,
Att'ys for Petitioners.

GEORGIA, }
Chatham County. }

Before me personally came H. M. Lofton, who on oath says that he is the general manager of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., and that the facts stated in the foregoing petition are true to the best of his knowledge and belief.

H. M. LOFTON,
Gen. Mgr. S., T. & I. of H. Ry.

Sworn to and subscribed before me this 19th day of August, 1899.

A. L. ALEXANDER,
Notary Public, Chat. Co., Ga.

GEORGIA, }
Chatham County. }

In the Superior Court of said County.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RWY. vs. MAYOR & ALDERMEN OF SAVANNAH. } In Equity. Petition for Injunction & Restraining Order.

Upon reading and considering the foregoing petition, it is ordered that the same be filed and that the Mayor and Aldermen of the City of Savannah, their officers, servants, agents and employees be and they are hereby temporarily restrained and prohibited from enforcing or further proceeding with the collection of the said sum of nineteen hundred dollars assessed as taxes and any further attempts to collect taxes, and that they do show cause before me at the court house of Chatham county on the 28th day of October, 1899, at 10 o'clock a. m., why the temporary injunction prayed for should not be granted. That the said defendant be served with a copy of the petition and order and rule *nisi*. This 19th day of August, 1899.

R. FALLIGANT,
Judge E. J. C. of Geo.

18 STATE OF GEORGIA,
Chatham County.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RY.
vs.
MAYOR & ALDERMEN CITY OF SAVANNAH.

To the sheriff of the county of Chatham or his legal advisers:

The defendant, Mayor & Ald'n of Savannah, is hereby required personally or by an attorney to be and appear at the next term of the superior court of Chatham Co. to be holden in and for said county on the 4th day in December next, then and there to answer the plaintiff's complaint, as in default thereof the court will proceed as to justice shall appertain.

Witness the Honorable R. Falligant, judge of said court. This the 19 day of August, 1899.

JAMES K. P. CARR, *Clerk.*

By consent of parties, the hearing in this case is continued to Saturday, Nov. 4, 1899, and the restraining order is continued in force until the further order of the court. Oct. 28, 1899.

R. FALLIGANT, *Judge.*

Answer to Rule to Show Cause.

In Chatham Superior Court.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RAILway Co. of Savannah, Ga.,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Savannah.
} Injunction, etc.

And now comes the above named municipal corporation and in answer to the rule to show cause granted on the 19th day of August, 1899, shows as cause why the temporary injunction should not issue as follows:

1. Petitioner does not show any reason in his petition for the injunction prayed for or other relief.

2. It appears by the allegations in the petition in connection with the tax ordinance referred to that the execution complained of had been legally issued, is legally enforceable, and no legal reason
19 exists for any interference therewith.

3. There is no equity or other ground for relief in the petition or under the facts, as will more fully appear by reference to the demurrer filed with this answer, and also the verified answer of this defendant here to the court shown.

Wherefore defendant prays that the injunction will not be granted.

SAM'L B. ADAMS,
Att'y for Def't.

Endorsements on the back: In Chatham superior court. Sav'h Thunderbolt & Isle of Hope R. R. *vs.* Mayor, etc., of Sav'h. In equity. Answer to rule to show cause. Filed in office Oct. 28/99. J. L. Murphy, dep. clerk S. C. C. C.

Answer of Defendant to Petition.

In Chatham Superior Court.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RAILway Co. of Savannah, Ga.,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Savannah. } Injunction, etc.

And now comes the above named municipal corporation, the defendant in the above cause, by its attorney at law, and subject to the demurrer filed by def't., answers the petition filed in said cause as follows:

1. Defendant admits the allegations in the first paragraph of the petition to be true, but it is also true that plaintiff is commonly known as a street railroad company, and the bulk of its business and revenue is due to the use of the streets of the city of Savannah by its electric passenger street cars.

2. On the 28th day of December, 1898, this defendant, through its council, passed a tax ordinance, the title of which is correctly set forth in the second paragraph of the petition, and in this ordinance it is provided, on page 11 of the printed pamphlet
20 that "street railroad companies, whether under the control of another company, or not, shall pay one hundred (100) dollars per mile or fraction of a mile of track, and, in addition thereto, twenty-five (25) dollars on each and every car at any time used by such company in the city. It shall also be required that each and every railroad company doing business in this city shall take out badges for all cars employed by them, which badges shall be furnished by the city treasurer, and which shall be numbered. It shall furthermore be required that each and every car employed by each and every street railroad company shall have such badge as hereinbefore provided securely fastened in a conspicuous place upon the inside of such car," as will more fully appear by reference to the said tax ordinance.

That at a meeting of the council of the city of Savannah, held March 22, 1899, another ordinance was passed of which the following is a copy, to wit:

"An ordinance to amend that part of the tax ordinance passed December 28, 1898, relating to street railroad companies, to be found on page 11 of the pamphlet containing the said tax ordinance.

SECTION 1. Be it ordained by the mayor and aldermen of the city of Savannah in council assembled, "That, for the purpose of expressing more clearly the intent of council, the words, on page 11 of the pamphlet containing the above mentioned tax ordinance, 'street railroad companies, whether under the control of another company or not, shall pay one hundred dollars per mile or fraction of a mile of track,' be and the same are hereby so amended that thereafter they shall read as follows: 'Street railroad companies, whether under the control of another company or not, in lieu of the specific tax heretofore required, shall pay to the city of Savannah for the privilege of doing business in the city and for the use of the streets of the city, at the rate of one hundred dollars per mile or fraction of a mile of track used in the city of Savannah by said railroad company, and it shall be the duty of street railroad companies to make a return under oath, through their proper official, of the amount of their trackage in the city of Savannah.' The balance of the paragraph herein referred to touching street railroad companies shall remain and read as it now is.

21 SECTION 2. Be it further ordained, That all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed."

Previous to the passage of the said tax ordinance of December 28, 1898, the plaintiff and other street railroad companies had been required to pay and had paid to the city of Savannah a specific tax of four hundred (400) dollars and, in addition a specific tax of twenty-five (25) dollars for each and every car used. As this tax of four hundred (400) dollars was thought to be unjust to a small company using but a small part of the public streets of the city, the tax ordinance was changed as herein set forth.

Accordingly, the plaintiff has been charged a specific or business tax on the basis of 18 98 / 100 miles of tracks in the city of Savannah used by the plaintiff, and on the 22nd day of July, 1899, an execution was issued against the plaintiff by the city treasurer, as required by the tax ordinance, for the sum of nineteen hundred (1900) dollars stated in the execution to be "specific tax for the year 1899 under the tax and revenue ordinance passed December 28, 1898."

No part of this claim of nineteen hundred dollars is for the tax on a car. On the 31st day of January, 1899, this plaintiff paid the car tax of twenty-five dollars on each car and took out a badge for each car as required by the ordinance. No execution was issued for the car tax and none was required, and plaintiff voluntarily paid the tax as it had been doing for a number of years.

3. Defendant denies the allegations in the third paragraph of the petition, and says that they are not true. That plaintiff has not paid the taxes or made the return required by law.

4. Defendant denies the allegations in the fourth paragraph of the petition, and, on the contrary, says that the tax required and mentioned in the said execution is a legal tax and is not contrary to law. Defendant says it is not a tax upon real estate belonging to the plaintiff or a property tax at all, but a specific or business tax graduated as mentioned in the ordinance and for the purpose mentioned. It is true that petitioner, through its attorney at law, has taken the position before the corporate authorities of this
22 defendant that it is not liable for any part of the tax mentioned in the tax ordinance as amended, including the specific tax on the basis of every car used; but, notwithstanding this notice, plaintiff has paid the tax of twenty-five dollars per car.

5. As heretofore stated, defendant did, on the 22nd day of July, 1899, cause an execution to be issued against the plaintiff for the sum of nineteen hundred (1900) dollars, but defendant says, that the execution was lawfully issued, that the same is due and owing from the plaintiff, and no reason exists why it should be stopped or interfered with.

Wherefore, defendant prays that the relief asked for by plaintiff may not be granted, and that it may be hence dismissed with its costs.

SAM'L B. ADAMS,
Att'y for Def't, The Mayor and Aldermen of the City of Savannah,
By HERMAN MYERS, *Mayor.*

Attest:
WM. P. BAILEY,
Clerk of Council.

[Seal of Savannah.]

GEORGIA, }
Chatham County. }

You, Herman Myers, do make oath that you are mayor of the city of Savannah and the executive head of the municipal corporation known as the mayor and aldermen of the city of Savannah, and that the allegations of fact in the foregoing answer are true.

HERMAN MYER.

Sworn to and subscribed before me this 25 day of October, 1899.

C. V. HERNANDEZ,
Notary Public, C. C., Ga.

Endorsements on the back: In Chatham superior court. December term, 1899. Savannah, Thunderbolt & Isle of Hope Railway *vs.* Mayor, etc., of Svh. In equity. Answer of def't. Filed in office Dec. 11 '99. J. L. Murphy, dep. clerk S. C. C. C.

23 *Amendment to Plaintiff's Petition* (1st).

In the Superior Court of Chatham County, Georgia, December Term, 1899.

THE SAVANNAH, THUNDERBOLT & ISLE OF HOPE RAILway of Savannah, Georgia,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Savannah.
} In Equity.

By leave of the court first had and obtained, the plaintiff amends its petition in the above entitled case, as follows:

First. By adding at the end of paragraph two of the petition the following words: "The original ordinance imposing this tax upon your petitioner and the City & Suburban Railway of Savannah, Ga., was passed December 28th, 1899, and was in these words:" "Street railroad companies, whether under the control of another company or not, shall pay one hundred dollars ($100) per mile, or fraction of a mile of track, and in addition thereto, twenty-five dollars ($25) for each and every car at any time used by such company in the city. It shall also be required that each and every railroad company doing business in this city shall take out badges for all cars employed by them, which badges shall be furnished by the city treasurer, and which shall be numbered." Subsequently on the 22nd day of March, 1899, the foregoing was amended as follows:

"An ordinance to amend that part of the tax ordinance passed December 28th, 1899, relating to street railroad companies, to be found on page 11 of the pamphlet containing the said tax ordinance."

SECTION ONE. Be it ordained by the mayor and aldermen of the city of Savannah in council assembled, That for the purpose of expressing more clearly the intent of council, the words on page 11 of the pamphlet containing the above mentioned tax ordinance,—"Street railroad companies, whether under the control of another company or not, shall pay one hundred dollars (100) per mile or fraction of a mile of track," be and the same are hereby so
24 amended that hereafter they shall read as follows: "Street railroad companies, whether under the control of another company or not, in lieu of the specific tax, heretofore required, shall pay to the city of Savannah for the privilege of doing business in the city, and for the use of the streets of the city, at the rate of one hundred dollars (100) per mile or fraction of a mile of track used in the city of Savannah by said railroad company, and it shall be the duty of the street railroad companies to make a return under oath through their proper official of the amount of their trackage

in the city of Savannah." The balance of the paragraph herein referred to touching street railroad companies, shall remain and read as it now is.

SECTION TWO. Be it further ordained, That all ordinances and parts of ordinances in conflict with this ordinance are hereby repealed."

Your petitioner avers that the mayor and aldermen of the city of Savannah, on March 22nd, 1899, were without the power to pass the said amendment, by which they undertook to transform specific property tax into a so-called license tax. The amendment itself does not legally constitute a license tax. It is not competent for the mayor and aldermen of Savannah to impose a license tax or a business tax upon railroad companies. There is no provision of law in Georgia whatsoever, authorizing the municipal authorities of this State to compel railroad companies of any kind, to pay for the privilege of doing business in the city or for the use of the streets of the city. All taxation upon railroads by municipal authorities must be levied and collected according to the provisions of the law, regulating municipal taxation of railroads. All railroads stand upon the same footing, as regards taxation. The said mayor and aldermen of Savannah have discriminated against your petition- and the City — Suburban Railway of Savannah, Ga., in that they have not imposed this tax upon any other railroad company doing business in Savannah, although there are other railroad companies who do business in the city, and use the streets of the city by consent of the mayor and aldermen.

25 Second. By adding at the end of the third paragraph of the petition the following words: " Your petitioner and the City & Suburban Railway of Savannah, Ga., paid to the State of Georgia, county of Chatham and city of Savannah, for the year 1898, the following taxes:

Statement of Taxes Paid by S., T. & I. of H. Ry. for 1898.

City taxes.	Amounts.	Discounts.
S., T. & I. of H. railway:		
Badge tax	275.00	27.50
Business tax	400.00	40.00
Property tax value 1078.78 at 1.45	1564.23	156.42
City & Suburban:		
Badge tax	375.00	37.50
Business tax	400.00	40.00
Property tax value 624.26 at 1.45	905.17	90.51
	3919.40	391.93

State taxes.

S., T. & I. of H. railway:

Property, value 1528.38 at 6.21 mills.....	$949.15	None
City & Suburban:		
Property, value 1421.18 at 6.21 mills.....	882.55	"
	1831.70	

County taxes.

S., T. & I. of H. railway:

Property value 1421.18 at 6.49 mills.....	991.92	None
City & Suburban:		
Property value 1421.18 at 6.49 mills.....	922.35	"
	1914.27	

Recapitulation.

City taxes	3919.40	
Less discount.....	391.93	
		$3527.47
State taxes no discount		1831.70
County taxes" "		1914.27
Total taxes paid in 1898.....		7273.44

For the year 1898, your petitioner and the City and Suburban Railway of Savannah, Ga., have paid to the State of Georgia, county of Chatham and the city of Savannah, the following taxes already, and the additional taxes here resisted are being insisted upon by the city. The items of those paid already are as follows:

Recapitulation.	Assessed.	Deductions.
City taxes	3156.60	322.91
State taxes.....	1587.64	4.71
County taxes.....	1860.08	4.02
	6604.32	331.64
Less deductions..	331.64	
Total taxes paid for 1899.....	6272.68	

26 Third. By adding at the end of the fourth paragraph of the petition the following words: "On November 4th, 1897, the said mayor and aldermen of Savannah entered into a contract with your petitioner and the City and Suburban Railway of Savannah, Ga., by which for a valuable consideration received by the city

the use of the streets for railway purposes which are now occupied by your petitioner and the City and Suburban Railway of Savannah, Ga., was guaranteed to them. It was expressly guaranteed that all the lines of railway provided for in the plan specified in said contract should be regularly operated upon reasonable schedules, the only condition attached to it being, that any portion of the same might be discontinued by authority of the mayor and aldermen of Savannah. Your petitioner has paid said sums of money contemplated by said contract, and has caused to be conveyed to it, the land called for by said contract. Your petitioner avers that under this contract, according to its true intent and meaning, the free use of the streets mentioned was granted, and guaranteed to your petitioner and the City & Suburban Railway of Savannah, Ga. The city of Savannah is bound by said contract, and has no legal right to violate the same, by requiring your petitioner to pay any additional sums of money for the right to use said streets.

Wherefore your petitioner prays that a permanent injunction may be granted as prayed for in the original petition.

BARROW & OSBORNE,
Plaintiff's Sol's.

GEORGIA,
Chatham County.

Before me personally came H. M. Lofton, general manager of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., who being duly sworn deposes and says that the allegations in the foregoing petition are true, except wherein they are stated upon information and belief.

H. M. LOFTON,
General Manager Savannah, Thunderbolt & Isle of Hope Railway.

Sworn to and subscribed before me this first day of January, 1900.

M. NAUGHTIN,
J. P., C. Co., Ga.

Amendment allowed.

R. FALLIGANT, *Judge.*

27 Endorsements on the back: In the superior court of Chatham Co. Ga. Dec. term, 1899. The Savannah, Thunderbolt and Isle of Hope Railway of Sav'h Ga. *vs.* The Mayor and Aldermen of the City of Savannah. Amendment to plaintiff's petition. Filed in office Jan'y 5, 1900. James K. P. Carr, clerk S. C. C. C.

2nd Amendment to Petition.

In the Superior Court of Chatham County, Georgia, December Term, 1899.

THE SAVANNAH, THUNDERBOLT & ISLE OF HOPE Railway of Savannah, Ga.,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Savannah.
} In Equity.

And now comes the plaintiff in the above-entitled case, and by leave of the court first had and obtained, amends its petition as follows, to wit: By adding at the end of the fourth paragraph of the original petition, the following additional words:

First. "Your petitioner avers that the ordinance passed by the mayor and council of the city of Savannah, December 28th, 1898, and subsequently amended on March 22nd, 1899, is unconstitutional, null and void. It is an authority exercised under the State of Georgia, and is repugnant to the Constitution of the United States, in that it impairs the obligation of the contract entered into between the said mayor and aldermen of the city of Savannah and your petitioner on November 4th, 1897, a copy of which is hereto attached as exhibit marked "A," which your petitioner prays may be taken as a part of this petition. Your petitioner avers that any construction of the constitution and laws of the State of Georgia, under authority of which the said ordinance above referred to was passed which would give validity to said ordinance makes it repugnant to that clause in the Constitution of the United States which declares that no State shall pass any law which impairs the obligation of a contract. The said the mayor and aldermen of the city of Savannah were paid on November 4th, 1897, in money and
28 in land for the privilege of using the same streets of Savannah which are now used, the said the mayor and aldermen received said money and land, and in consideration thereof entered into a contract with your petitioner, granting the right to use of said streets. To undertake now to impose an additional burden, and make an additional charge, is a violation of that contract, and impairs its obligation.

Second. The said ordinance of December 28th, 1898, amended March 22nd, 1899, is unconstitutional, null and void, in that it is repugnant to the fourteenth amendment of the Constitution of the United States, for the reason that it is an attempt to take your petitioner's property without due process of law. This ordinance is an authority exercised under the State of Georgia, and there is no law in that State which authorizes the municipal government of a city to levy any license tax or business tax upon a railroad of any kind,

nor to compel a railroad company of any kind to pay for the privilege of doing business.

Wherefore your petitioner prays that by a decree in this court, the said ordinance may be decreed to be null and void, upon the ground that it being an authority exercised under the State, is repugnant to the Constitution of the United States.

And as in duty bound, your petitioner will ever pray, etc.

BARROW & OSBORNE,
Plaintiff's Att'ys.

GEORGIA,
Chatham County.

Before me personally appeared H. M. Lofton, general manager of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., who on oath says that the facts stated in the foregoing amendment are true.

H. M. LOFTON,
Gen. M'g'r S., T. & I. of H. Ry.

Sworn to and subscribed before me this 5th day of January, 1900.

ROB'T M. HITCH,
Notary Public, C. C., Ga.

[SEAL OF NOTARY.]

Amendment allowed.

R. FALLIGANT, *Judge.*

29 *Contract with City Nov.* 4/97.

The committee on streets and lanes to which was referred the petition of the Savannah, Thunderbolt and Isle of Hope Railway, relative to the adjustment of its lines, submit the following report:

SAVANNAH, GA., *Nov.* 3, 1897.

To the honorable mayor and aldermen of the city of Savannah in council assembled:

The committee on streets and lanes to which was referred the petition of the Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Ga., dated June 29, 1897, in relation to the readjustment of its lines within the city of Savannah, begs leave to report that:

I. After a number of conferences between this committee and the officials of said petitioner, involving a discussion of this important matter, in all its bearings, not only in reference to the establishment of a more complete and compact railway system (including the lines of petitioner as well as those of the City and Suburban Railway Company, operated by said petitioner), better adapted than the present one to existing requirements, and to future needs of the public; but at the same time requiring the said railway company

to afford the public better accommodation and service, the following has been determined upon by this committee as the plan to which said railway company must conform the tracks of said system, to-wit:

1. A double belt to be known as the "Whitaker, Barnard and Abercorn belt," commencing at the intersection of Abercorn and Bay streets, and running west along Bay street to Barnard street, thence south along Barnard street to Second street, thence east along Second street to Whitaker street, thence south along Whitaker street extended to Tenth street, thence east along Tenth street to Abercorn street, thence north along Abercorn street to the point of beginning, and commencing at the intersection of Whitaker and Bay streets and running south along Whitaker street to Second street, the double tracking on Abercorn street, including squares from its intersection with Bay street to its intersection with Tenth street, to be completed; the tracks on Bay street, between Abercorn and Barnard streets to remain as they are now.

2. A belt to be known as the "Outside belt," commencing at the intersection of Bay and East Broad streets, and running west along Bay street to West Broad street, thence south along West Broad street to Anderson street, thence east along Anderson street to East Broad street, and thence north along East Broad street to the place of beginning; the tracks on Bay street to remain as they are now, except that the double tracking is to be completed thereon between Barnard and West Broad street, the double tracking on West Broad street, from its intersection with Bay St. to its intersection with Anderson street to be completed; the double tracking on Anderson street from its intersection with West Broad street to its intersection with East Broad street to be completed; the double tracking on East Broad street from its intersection with Anderson street to its intersection with Bay street to be completed; so that this entire belt will be double tracked.

3. "Liberty Street line," commencing at the intersection of Liberty and West Broad street, and running *each* along Liberty street to Randolph street, thence north along Randolph street to President street, thence west along President street to East Broad street, connecting thereat with the "Outside belt."

4. "Battery Park spur," commencing at the intersection of West Broad and Anderson streets, and running thence westwardly along Anderson street, to the Ogeechee road, and thence along the Ogeechee road to Battery park.

5. "Montgomery Street spur," commencing at the intersection of Anderson and Montgomery streets, and running thence southwardly along Montgomery street to Twelfth street.

6. "Indian Street spur," commencing at the intersection of Bay and West Broad streets, and running thence northwardly to Indian street, and thence running through Indian street to the bridge across the Ogeechee canal.

6. "Habersham and Broughton Streets line," commencing at the

intersection of Seventh and Habersham streets, and running
31 thence northwardly along Habersham street to St. Julian street, thence westwardly along St. Julian street around Johnson square, through the market to Montgomery street, thence southwardly along Montgomery street to Broughton street, thence westwardly on and along Broughton street to West Broad, and also eastwardly on Broughton, from Montgomery street to Habersham street; the double tracking on Habersham street, including squares, to be completed from Seventh street to Broughton street, and said line on St. Julian, Montgomery and Broughton streets forming a loop in connection with the trackage on Habersham street.

7. "Bolton Street line," commencing at the intersection of Abercorn and Bolton streets, and running eastwardly along Bolton street and Bolton street extended to the city limits.

8. "Gwinnett Street spur," commencing at the intersection of Gwinnett and Habersham streets, and running thence eastwardly along Gwinnett street and Gwinnett street extended to Ott street, and thence southwardly along Ott street to Henry street.

II. In order to carry out the plan delineated above, and to enable the railway company to properly operate the lines and spurs above described, it is necessary that certain existing trackage should be removed, and such removals are required by the mayor and aldermen of the city of Savannah, to wit:

(*a.*) The tracks on Robert street beginning at its intersection with West Broad street, and extending through Roberts street to its intersection with Cemetery street, and on Cemetery street for its entire length.

(*b.*) The tracks on Montgomery street beginning at its intersection with Liberty street and running thence southwardly through Montgomery street to Anderson.

(*c.*) The tracks on Duffy street beginning at its intersection with Cemetery street and running through Duffy street eastwardly to its intersection with Price street.

(*d.*) The tracks on Price street beginning at its intersection with Duffy street, and running northwardly through Price street to its intersection with St. Julian street.

32 (*e.*) The tracks on St. Julian street from its intersection with Price street to its intersection with Habersham street.

(*f.*) The tracks on Habersham street commencing at its intersection with Seventh street and running southwardly along Habersham street extended to its intersection with Estill avenue, including the removal of the bridge over the right of way of the Savannah, Florida and Western railway.

(*g.*) The tracks of Estill avenue, commencing at its intersection with Habersham street extended and running westwardly along said avenue across Bull street and thence westwardly along what is known as Best street, to its intersection with Montgomery street.

(*h.*) The tracks on Montgomery street from its intersection with what is known as Best street to its intersection with Twelfth street.

(i.) The tracks on Montgomery street from its intersection with Broughton street and extending through said Montgomery street southwardly to President street, and thence west on President street to West Broad street.

(j.) The tracks on Second street from its intersection with Whitaker street, and running eastwardly to its intersection with Abercorn street.

III. This plan also contemplates the removal of the turnouts leaving a single track on Whitaker street, between Bay street and Second street and the same is required of petitioner.

It further contemplates that the tracks in front of the entrance of the Central of Georgia railway passenger depot shall be so adjusted in pursuance of a joint plan to be formulated by the city engineer and the engineer of the railway company, under the superintendence of the committee on streets and lanes, as to accommodate the public and decrease the danger of accidents immediately in front of said passenger depot, and the same is to be done as soon as it reasonably can be by said railway company.

IV. In order to carry out the above plan it is necessary that petitioner should lay, or cause to be laid, certain additional tracks beyond what has already been defined as completion of existing
33 double tracking on streets, and the same are permitted and required to be laid by the mayor and aldermen of the city of Savannah, towit:

(a.) On Tenth street a double track is to be laid from its intersection with Whitaker street extended to its intersection with Abercorn street.

(b.) On Abercorn street a double track is to be laid from its intersection with Tenth street, extended through Abercorn street northwardly to its intersection with Second street, in addition to which the double tracking will be completed on said Abercorn street, including squares, to Bay street as hereinbefore stated.

(c.) On Second street a track is to be laid from its intersection with Whitaker street to its intersection with Barnard street.

(d.) On Barnard street from its intersection with Second street a track is to be laid extending through said Barnard street northwardly to Anderson street.

(e.) On Habersham street from Broughton street to St. Julian street a track is to be laid, connecting in the square with the present line on said last named street.

V. In the negotiations leading up to the adoption of the above mentioned plan this committee on behalf of the city insisted that the following specific things be done by the railway company, to wit:

(a.) On Barnard street and Second street, where the said railway company is to lay a track from Anderson street to Second street and along Second street to Whitaker street extended, it is necessary to open up Barnard street and clear it of the obstruction now existing therein. The mayor and aldermen of the city of Savannah is to purchase the land not already purchased on said Barnard street be-

tween Anderson and Second streets, so as to completely open the said street between said points, and the said railway company is to pay to the city a sum of money equivalent to the amount necessary for said purpose, a proper allowance being made by the owner of the land obstructing said Barnard street in the way of frontage on Bull street to be allowed him by the city.

(*b.*) It becomes necessary in laying the double track of said railway company on Tenth street, between Whitaker street ex-
34 tended and Abercorn street, to open said Tenth street, between Whitaker extended and Bull street. The mayor and aldermen of the city of Savannah will proceed to open said Tenth street, between Whitaker extended and Bull street, and it is required of the said railway company that it pay into the treasury of the city of Savannah a sum of money equivalent to one half of the amount expended for said purpose.

(*c.*) The said railway company is to procure from the City and Suburban Railway Company (which owns certain land in Barnard street extended from Second street southwardly, amounting to twenty-nine thousand, nine hundred and sixty-three tenths (29,960.3) square feet) a conveyance of the same to the mayor and aldermen of the city of Savannah, free of cost, as a part of Barnard street.

(*d.*) The said railway company, owning certain land in Bolton street, is to convey to the mayor and aldermen of the city of Savannah, so as to aid it in opening Bolton street eastwardly of the Savannah, Florida and Western railway tracks, all of the right, title, interest, and estate of the said Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, in and to such lands in Bolton street, preserving, of course, the easement of the said street railway company over said land for its railway purposes.

(*e.*) It was deemed by the committee to be a matter of great importance to the people of Savannah, that Price street should be opened from one end to the other as a driveway, the same being a very narrow street, and upon which no railway track should be laid, and in view of the fact that the plan adopted by the committee affords ample street railway facilities to the residents of this section of the city, the committee insisted as one of its conditions that the railway company should remove its tracks from this street.

(*f.*) The fare to be charged from any point on said railway system to any other point on the same within the limits of the city of Savannah shall be five (5) cents for each passenger so conveyed upon a continuous passage by day or by night, proper transfer or transfers to be given such passengers at all intersecting points; this being intended to cover the said street railway system, as composed
35 of the lines of petitioner, as well as those of the city and Suburban Railway Company, and of any other lines which may hereafter be acquired or operated by said petitioner within the limits of the city of Savannah.

(*g.*) The said railway company is to procure from the City and Suburban Railway Company a conveyance to the mayor and alder-

men of the city of Savannah, free of cost, of all the right, title, interest and estate of the said last named railway company in and to that portion of Whitaker street which runs through the City and Suburban Railway stables property, lying between Second and Fourth streets, preserving, of course, the easement of the said railway company over said land for its railway purposes.

VI. The railway company accepted these terms upon the express condition, however, that in consideration of all the foregoing and of the benefits accruing to the mayor and aldermen of the city of Savannah and to the public, especially in the removal of the tracks from that portion of Price street, extending from St. Julian street to Duffy street, at the instance and request of the city, should any other street railway company desire to occupy said portion of Price street and the mayor and aldermen of the city of Savannah should grant permission to do so, such railway company shall pay Savannah six (6) dollars per running foot for so much of said portion of Price street as may be occupied by the tracks of the same, which sum of money shall be paid over by the mayor and aldermen of the city of Savannah to said Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, its successors or assigns. This condition was considered by the committee as just and equitable and was agreed to as such.

Wherefore this committee recommends that the Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Ga., be authorized to readjust or cause to be readjusted, the lines and tracks of said railway system, in accordance with the aforesaid plan adopted by this committee, a map of which is filed with this report; and to that end the said railway company be required to take up and remove tracks from the streets or sections of streets which, under said
36 plan, will be no longer needed for railroad purposes, to construct new tracks on the streets or sections of streets as called for by said plan, to construct and complete the double tracking contemplated by said plan, to take up and remove or cause to be taken up and removed the turnouts and switches contemplated by said plan, to put in and construct such turnouts, curves and switches as may be required in perfecting said plan, and to make such other minor changes in the tracks of said system of street railroad as may be necessary to perfect the said plan, the entire work to be under the direction of the committee on streets and lanes and of the city engineer.

Before any steps shall be taken by the railway company toward putting said plan into operation the said company shall signify in writing to the mayor and aldermen of the city of Savannah its acceptance of the terms and conditions imposed upon it by this report, and shall additionally bind itself in a manner satisfactory to the city attorney that it will promptly, and in good faith, perform its several obligations in the premises. All the lines provided for in the foregoing plan shall be regularly operated upon reasonable schedules by said railway company, unless at any time the opera-

tion of any portion of the same shall be discontinued by authority of the mayor and aldermen of the city of Savannah.

T. J. DAVIS, *Chairman.*
W. F. REID, *Alderman.*
JOHN W. SMITH, *Alderman.*
S. KROUSKOFF, *Alderman.*
W. W. OWENS, *Alderman.*

The ayes and nays being called for, the vote resulted as follows: Ayes: Weil, Charlton, Davis, Reid, Owens, Krouskoff, Smith, Hull—8. Nays: Guckenheimer, Wylly—2. Report adopted.

GEORGIA, }
Chatham County. }

This agreement entered into this — day of April in the year 1898, between the Mayor and Aldermen of Savannah, and the Savannah, Thunderbolt & Isle of Hope Railway, a corporation of said State and county, witnesseth:

37 Whereas, heretofore, to wit, on November 4th, 1897, a contract was entered into by and between the above named parties, readjusting the lines of street railway in the city of Savannah; and

Whereas, it is mutually desired that said contract should be modified in certain particulars:

Therefore, in consideration of the increased facilities which will be furnished to the public by the removal of switches and dispensing with tracks in the streets hereinafter referred to, and the convenience to the said railway in operating its lines, it is mutually agreed by and between the Mayor and Aldermen of the City of Savannah, party of the first part, and the Savannah, Thunderbolt & Isle of Hope Railway, party of the second part, that said contract be changed in the following respects and to the following extent; and the provisions hereof shall be embodied in, and become a part of said contract:

First. The railway company shall remove its switches or side track in Broughton street, and shall run a single straight track in place of same; and shall pave with asphaltum the space outside the rails where the pavement is removed, from end to end of the track in said street, including the space formerly occupied by switch or side track.

Second. The railway shall not remove its track from Duffy street, and shall not place a double track on Anderson street, nor in that southern portion of East Broad street where there is now only a single track, nor in that western portion of Bay street between Barnard and West Broad street. The switches in Duffy street are to be taken out by the railway as soon as the guage is changed so that it can be operated in connection with Anderson street.

Third. The railway company shall extend its track on Duffy street to East Broad and connect it there by a suitable curve or curves with the track of East Broad.

Fourth. In all other respects as herein expressly provided, the said contract of November 4th, 1897, shall remain in full force.

Fifth. This agreement is made by the mayor and aldermen of Savannah in council assembled and by the board of directors of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, the action of the said mayor and aldermen being evidenced by their public records and minutes and that of the said railway being signified to the said mayor and aldermen by the proper officer in writing under the seal of the said railway.

38

GEORGIA, }
Chatham County. }

This agreement made between the Mayor and Aldermen of the City of Savannah, party of the first part, and the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., party of the second part, witnesseth:

That for and in consideration of the mutual convenience and advantage to the two parties above mentioned, the contract of November 4th, 1897, between them, readjusting the lines of St. railway in Savannah, Ga., which has been subsequently modified, be and the same is hereby further modified and changed as hereinafter provided and the terms of this agreement shall become a part of said contract of November 4th, 1897.

First. The line of railway of the City and Suburban Railway of Savannah, Ga., shall be extended southward on Barnard St. from Second St. to Tenth St., and eastwardly through Tenth St. from Barnard St. to Whitaker, to its intersection with the present line at that point and the right to lay down, construct, maintain and operate said railway through said streets as before stated is granted, subject to the control and regulation of the said mayor and aldermen, the same as other lines of railway as provided in said contract of November 4th, 1897.

Second. The line of railway on Second St. from Barnard to Whitaker shall be taken up and removed.

Third. In all other respects, except as herein expressly provided, the said contract of Nov. 4th, 1897, and modifications of the same heretofore made shall remain in full force.

Fourth. This agreement is made by the mayor and aldermen of Savannah in council assembled and by the board of directors of the Savannah, Thunderbolt and Isle of Hope Railway of Savannah; the action of the said the mayor and aldermen being evidenced by their public records and minutes, and that of the said railway being signified by the said mayor and aldermen by the proper officer in writing under the seal of the said railway. Done this July 27th, 1898.

39

Endorsements on the back: In the superior court of Chatham county, Dec. term, 1899. S. T. & I. of H. Ry. of Savannah, Ga. *vs.* The Mayor and Aldermen of Savannah. 2nd amendment filed in office Jan'y 5, 1900. J. J. Murphy, dep. clerk S. C. C. C.

Order of Judge Refusing Injunction.

In Chatham Superior Court.

SAVANNAH, THUNDERBOLT AND ISLE OF HOPE RAILway of Savannah, Ga.,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF SAvannah. } Injunction.

In the above stated cause, in which the declaration was filed and the order to show cause was granted on the 19th day of August, 1899 (ninety-nine), the court being of the opinion that the tax required and the execution issued are lawful, it is considered and ordered that the prayer for a temporary injunction be and the same is denied, and the restraining order heretofore granted be and the same is hereby set aside. This February 19, 1900.

R. FALLIGANT,
Judge E. J. C. of Geo.

SAM'L B. ADAMS,
Att'y for Def't.

Endorsements on the back: In Chatham superior court. Savannah, Thunderbolt and Isle of Hope Railway of Sav'h, Ga. *vs.* The Mayor and Aldermen of the City of Sav'h. Injunction. Order denying injunction and setting aside restraining order. Filed in office Feb. 19, 1900. James K. P. Carr, clerk S. C. C. C.

40 *Amendment to Defendant's Answer.*

In Chatham Superior Court.

SAVANNAH, THUNDERBOLT & ISLE OF HOPE Railway of Savannah, Georgia,
vs.
THE MAYOR AND ALDERMEN OF THE CITY OF Savannah. } Injunction, etc.

And now comes the above named municipal corporation, by its attorney at law, and in answer to the amendments filed in said cause (which is the cause brought originally to the December term, 1899, of the superior court of Chatham county), says that it denies

each and all of the allegations contained in the said amendments, and says that the said allegations are not true, and that no contract upon the subject of the taxation or non-taxation of the above named plaintiff was made or attempted to be made or could be made by this defendant.

SAM'L B. ADAMS,
Att'y for Def't.

Amendment allowed. In open court this 12th day of July, 1901

R. FALLIGANT, *Judge.*

Endorsements on the back: In Chatham sup. court. Business tax case. Sav'h, Thunderbolt & Isle of Hope R. R. *vs.* Mayor, etc., of Savannah. Injunction. Amendment filed in office Jul- 12, 1901. James K. P. Carr, clerk S. C. C. C.

Verdict.

SAVANNAH, *Jul-* 12/01.

We the jury find for the defendant.

JOHN S. HAINES, *Foreman.*

Judgment on the Verdict.

In Chatham Superior Court.

SAVANNAH, THUNDERBOLT AND ISLE OF HOPE Railway of Savannah, Ga., *vs.* THE MAYOR AND ALDERMEN OF THE CITY OF Savannah. } Injunction, etc.

41 The jury in the above stated cause,—it being that filed August 19, 1899, to the December term, 1899, of this court,—having this day, under the instructions of the court, returned a verdict for the defendant, the above named municipal corporation, it is considered and ordered, that the said verdict be and it is hereby made the judgment and decree of the court, and that the plaintiff pay the costs of court. In open court this 12th day of July, 1901.

R. FALLIGANT,
Judge E. J. C. of Geo.

Endorsements on the back: In Chatham sup. court. #489. Sav'h, Thunderbolt & Isle of Hope Rwy. Co. *vs.* Mayor, etc., of Sav'h. Judgment on verdict. Filed in office July 12th, 1901. James K. P. Carr, clerk S. C. C. C.

Motion for New Trial.

In the Superior Court of Chatham County, Georgia.

THE S., T. & I. OF H. RY. OF SAVANNAH
vs.
THE MAYOR AND ALDERMEN OF SAVANNAH. } Motion for New Trial.

The jury in the above entitled case, on the 12th day of the present month, and during the present term of the court, under instructions from the judge, found a verdict for the defendant, and thereupon a decree was entered. And now within thirty (30) days comes the plaintiff, The Savannah, Thunderbolt & Isle of Hope Railway, and moves the court to set aside said verdict and grant it a new trial in said case, upon the following grounds, to wit:

First. The verdict is without evidence to support it.

Second. The verdict is contrary to law.

Third. The court erred in instructing a verdict for the defendant.

Fourth. Said verdict and decree for the defendant are erro-
42 neous, for the reason that the evidence showed that other railroads using the streets of Savannah by permission from council, for local business and carrying on therein a strictly local business, were not taxed on their business and were not charged anything for the privilege of using the streets, the evidence thus making it clear that the said ordinance was not uniform on all individuals of the same class and was consequently a void ordinance, denying to the plaintiff the equal protection of the laws and being violative of the 14th amendment of the Constitution of the United States.

Fifth. The said verdict and judgment are erroneous, for the reason that the evidence showed that a contract existed between the said railway and the said city of Savannah, by which the privilege of using the streets of Savannah was granted by the city to the railway and paid for by the railway, and this ordinance is an impairment of the obligation of that contract, in that, it seeks to compel the said railway to pay for the privilege of using the same streets which it had already bought and paid for.

Sixth. The said verdict and judgment are erroneous for the reason that Whitaker and Bolton streets are included in the mileage which is charged for, while the evidence shows that a portion of Whitaker and Bolton street- were conveyed to the city by the railway and the right to the use for railway purposes reserved.

Seventh. The said verdict and decree are erroneous for the reason that there is no law in the State of Georgia which authorizes the municipal government of any city to levy any license tax or business tax upon a railroad company of any kind nor to compel a railroad company of any kind to pay for the privilege of doing business

in said city; said ordinance for this reason being void as an attempt to take the plaintiff's property without due process of law and being repugnant to the 14th amendment of the Constitution of the United States.

Wherefore the said The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, prays that said verdict and decree may be set aside and a new trial granted.

BARROW & BARROW,
Attorneys for S., T. & I. of H. Ry.

43 Let motion be filed in office and let a copy of the same and of this order be served upon the defendant before the hearing hereinafter provided for.

The defendant, The Mayor and Aldermen of Savannah, will show cause before me on the 27th day of July, in the present month, at ten (10) o'clock, a. m., why a new trial should not be granted. In open court July 19th, 1901.

R. FALLIGANT,
Judge E. J. C. of Georgia.

Endorsements on the back: In the superior court of Chatham Co. June term, 1901. The Sav'h, Thunderbolt & Isle of Hope Rwy. of Savannah, Ga. *vs.* The Mayor and Aldermen of Savannah. Motion for new trial. Filed in office July 19, 1901. J. L. Murphy, dep. clerk S. C. C. C. Due and legal service of the within motion for a new trial and rule *nisi* acknowledged. This July 19th, 1901. Sam'l B. Adams, def't's att'y.

Brief of the Evidence.

In the Superior Court of Chatham County, Georgia.

THE S., T. & I. OF H. RAILWAY OF SAVANNAH, GA.,
vs.
THE MAYOR AND ALDERMEN OF SAVANNAH, GA.

Brief of evidence on the motion for a new trial for the plaintiff.

Testimony of H. M. Lofton, general manager of the Savannah, Thunderbolt & Isle of Hope railway in 1899 and 1900.

There are eight (8) miles of track of the City and Suburban Railway of Savannah, Ga., in the corporate limits of the city of Savannah, and ten (10) miles of track outside of the corporate limits of the city of Savannah. There are twelve and one half (12½) miles of track of the Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Ga., in the corporate limits of the city of Savannah, and

five and one half (5½) miles of track outside of the corpo-
44 rate limits of the city of Savannah. All taxes due to the State of Georgia, county of Chatham, and city of Savannah, by both of said railways have been regularly returned to the comptroller-general under the act of October 16th, 1899, and the act of December 24th, 1890, the latter entitled "An act to make railroad companies subject to municipal taxation," and the taxes provided for by these laws have been paid every year in accordance with said laws since the passage of the act of December 24th, 1890. The Central of Georgia railroad is now and has been for years using some of the streets of Savannah, particularly River street, by laying down its tracks longitudinally thereon and operating its trains upon it by the consent of the mayor and aldermen of the city of Savannah. Witness is informed and believes that no attempt has been made to impose any tax upon said Central of Georgia railway for the privilege of using said streets. They use nearly a mile of River street with their tracks laid longitudinally thereon.

Certified copy of tax returns of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., to the comptroller-general of the State of Georgia for the year 1899, showing—

Value of rolling stock and other personal property in this State	$64,713.50
Value of real estate and road bed in this State	82,000.00
Aggregate value of whole property in this State	$146,713.51
State taxes, rate 5.36, amount	786.38

Chatham.

Main and side track—miles 18, value	$72,000.00
Value of real estate, including bridges, etc	10,000.00
Value of track and real estate	82,000.00
Pro rata value of personal property	64,713.50
Aggregate value in county	$146,713.51

Savannah.

Main and side track—miles, 12½.

Value	$50,000.00
Value of real estate	10,000.00
Value of track and real estate	60,000.00
Pro rata value of personal property	47,351.00
45 Aggregate value in city or town	$107,351.00

Certified by Wm. A. Wright, comptroller general.

Certified copy of tax returns of the City & Suburban Railway of Savannah, Ga., to the comptroller general of the State of Georgia for the year 1899.

Value of rolling stock and other personal property in this State	$36,730.67
Value of real estate and road bed in this State	111,000.00
Aggregate value of whole property in this State	$147,730.67
State taxes, rate 5.36, amount	791.83

Chatham county.

Main and side track—miles, 18.

Value	$72,000.00
Value of real estate, including bridges, etc	39,000.00
Value of track and real estate	111,000.00
Pro rata value of personal property	36,730.67
Aggregate value in county	$147,730.67

Savannah city.

Main and side track—miles, 8.

Value	$32,000.00
Value of real estate	10,000.00
Value of track and real estate	43,000.00
Pro rata value of personal property	13,898.00
Aggregate value in city or town	$55,898.00

Certified by Wm. A. Wright, comptroller general.

Tax Receipts for 1899 *Paid.*

State taxes	$1,582.93
County taxes	1,856.06
City taxes	2,833.69
Total amount, including badge taxes	$6,272.68

Contract with the city of Savannah as follows:

The committee on streets and lanes, to which was referred the petition of the Savannah, Thunderbolt & Isle of Hope railway relative to the adjustment of its lines, submit the following report:

46 SAVANNAH, GA., *Nov.* 3, 1897.

To the honorable mayor and aldermen of the city of Savannah in council assembled:

The committee on streets and lanes, to which was referred the petition of the Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Ga., dated June 29th, 1897, in relation to the readjustment of its lines within the city of Savannah, beg leave to report that:

I. After a number of conferences between this committee and the officials of said petitioner, involving a discussion of this important matter in all of its bearings, not only in reference to the establishment of a more complete and compact railway system (including the lines of petitioner as well as those of the City and Suburban Railway Company, operated by said petitioner), better adapted than the present one to existing requirements and to future needs of the public, but at the same time requiring the said railway company to afford the public better accommodation and service, the following has been determined upon by this committee as the plan to which said railway company must conform the tracks of said system, to-wit:

1. A double belt, to be known as the "Whitaker, Barnard and Abercorn belt," commencing at the intersection of Abercorn and Bay streets and running west along Bay street to Barnard, thence along Barnard street to Second street; thence east along Second street to Whitaker street, thence south along Whitaker street extended to Tenth street, thence east along Tenth street to Abercorn street; thence north along Abercorn street to the point of beginning, and commencing at the intersection of Whitaker and Bay streets and running south along Whitaker street to Second street; the double track on Abercorn street, including squares from its intersection with Bay street to its intersection with Tenth street, to be completed; the tracks on Bay street between Abercorn and Barnard street to remain as they are now.

2. A belt to be known as the "Outside belt," commencing at the intersection of Bay and East Broad street and running west along

47 Bay street to West Broad street, thence south along West Broad street to Anderson street, thence east along Anderson street to East Broad street, and thence north along East Broad street to the place of beginning; the tracks on Bay street to remain as they are now, except that the double tracking is to be completed thereon between Barnard and West Broad street; the double tracking on West Broad street from its intersection with Bay street to its intersection with Anderson street to be completed; the double tracking on Anderson street from its intersection with West Broad street to its intersection with East Broad street to be completed; the double tracking on East Broad street from its intersection with Anderson street to its intersection with Bay street to be completed, so that this entire belt will be double tracked.

3. "Liberty Street line," commencing at the intersection of Liberty and West Broad streets and running east along Liberty street to Randolph street, thence north along Randolph street to President street, thence west along President street to East Broad street, connecting thereat with the "Outside belt."

4. "Battery Park spur," commencing at the intersection of West Broad and Anderson streets and running thence westwardly along Anderson street to the Ogeechee road, and thence running along the Ogeechee road to Battery park.

5. "Montgomery Street spur," commencing at the intersection of Anderson and Montgomery streets and running thence southwardly along Montgomery street to Twelfth street.

6. "Indian Street spur," commencing at the intersection of Bay and West Broad street- and running thence northwardly to Indian street, and thence running through Indian street to the bridge crossing the Ogeechee canal.

6. "Habersham and Broughton Street- line," commencing at the intersection of Seventh and Habersham streets and running thence northwardly along Habersham street to St. Julian street, thence westwardly along St. Julian street around Johnson square, through the market to Montgomery street; thence southwardly along
48 Montgomery street to Broughton street, thence westwardly on and along Broughton street to West Broad street, and also eastwardly on Broughton street from Montgomery street to Habersham street; the double tracking on Habersham street, including the square to be completed from Seventh street to Broughton street, and said line on St. Julian, Montgomery and Broughton street- forming a loop in connection with the trackage on Habersham street.

7. "Bolton Street line," commencing at the intersection of Abercorn and Bolton streets, and running eastwardly along Bolton street and Bolton street extended to the city limits.

8. "Gwinnett Street spur," commencing at the intersection of Gwinnett and Habersham streets and running thence eastwardly along Gwinnett street and Gwinnett street extended to Ott street, and thence southwardly along Ott street to Henry street.

H. In order to carry out the plan delineated above, and to enable the railway company to properly operate the lines and spurs above described, it is necessary that certain existing trackage should be removed, and such removals are required by the mayor and aldermen of the city of Savannah, to wit:

a. The tracks on Roberts street, beginning at its intersection with West Broad street and extending through Roberts street to its intersection with Cemetery street, and on Cemetery street for its entire length.

b. The tracks on Montgomery street beginning at its intersection with Liberty street and running thence southwardly through Montgomery street to Anderson street.

c. The tracks on Duffy street, and running through Duffy street eastwardly to its intersection with Price street.

d. The tracks on Price street, beginning at its intersection with Duffy street and running northwardly through Price street to its intersection with St. Julian street.

e. The tracks on St. Julian street from its intersection with Price street to its intersection with Habersham street.

49 *f.* The tracks on Habersham street, commencing at its intersection with Seventh street and running southwardly along Habersham street extended to its intersection with Estill avenue, including the removal of the bridge over the right of way of the Savannah, Florida and Western railway.

g. The tracks on Estill avenue, commencing at its intersection with Habersham street extended and running westwardly along said avenue across Bull street and thence westwardly along what is known as Best street to its intersection with Montgomery street.

h. The tracks on Montgomery street from its intersection with what is known as Best street to its intersection with Twelfth street.

i. The tracks on Montgomery street from its intersection with Broughton street, and extending through said Montgomery street southwardly to President street and thence westwardly on President street to West Broad street.

j. The tracks on Second street from its intersection with Whitaker street and running easterly to its intersection with Abercorn street.

This plan also contemplates the removal of the turnouts, leaving a single track on Wgitaker street between Bay street and Second street, and the same is required of petitioner.

It is further contemplated that the tracks in front of the entrance of the Central of Georgia railway passenger depot shall be so adjusted in pursuance of a joint plan to be formulated by the city engineer and the engineer of the railway company, under the superintendence of the committee on streets and lanes, as to accommodate the public and decrease the danger of accidents immediately in front of said passenger depot, and the same is to be done as soon as it reasonably can be by said railway company.

In order to further carry out the above plan it is necessary that petitioner should lay, or cause to be laid, certain additional tracks beyond that has already been defined as completion of existing double tracking on streets, and same are permitted and required to be laid by the mayor and aldermen of the city of Savannah, to wit:

50 *a.* On Tenth street a double track is to be laid from its intersection with Whitaker street extended to its intersection with Abercorn street.

b. On Abercorn street a double track is to be laid from its intersection with Tenth street, extended through Abercorn street northwardly to its intersection with Second street, in addition to which the double tracking will be completed on said Abercorn street, including squares to Bay street, as hereinbefore stated.

c. On Second street a track is to be laid from its intersection with Whitaker street to its intersection with Barnard street.

d. On Barnard street from its intersection with Second street, a track is to be laid extending through said Barnard street northwardly to Anderson street.

e. On Habersham street from Broughton street to St. Julian street a track is to be laid, connecting in the square with the present line on said last named street.

In the negotiations leading up to the adoption of the above mentioned plan this committee on behalf of the city insisted that the following specific things should be done by the railway company to wit:

a. On Barnard street and Second street where the said railway company is to lay track from Anderson street to Second street and along Second street to Whitaker street extended it is necessary to open up Barnard street and clear it of the obstructions now existing therein.

The mayor and aldermen of the city of Savannah is to purchase the land not already purchased on said Barnard street between Anderson and Second street so as to completely open the said street between the said points, and the said railway company is to pay to the city a sum of money equivalent to the amount necessary for said purpose, a proper allowance being made by the owner of the land obstructing said Barnard street in the way of frontage on Bull street to be allowed him by the city.

51 *b.* It becomes necessary in laying the double track of said railway company on Tenth street between Whitaker street extended and Abercorn street, to open said Tenth street between Whitaker street extended and Bull street. The mayor and aldermen of the city of Savannah will proceed to open said Tenth street between Whitaker street extended and Bull street, and it is required of the said railway company that it pay into the treasury of the city of Savannah a sum of money equivalent to one half of the amount expended for said purpose.

c. The said railway company is to procure from the City and Suburban Railway Company, which own certain land in Barnard street extended from Second street southwardly, amounting to twenty-nine thousand, nine hundred and sixty-three tenths square feet (29,960.3) a conveyance of the same to the mayor and aldermen of the city of Savannah, free of cost, as a part of Barnard street.

d. The said railway company, owning certain land in Bolton street, is to convey to the mayor and aldermen of the city of Savannah, so as to aid it in opening Bolton street eastwardly of the Savannah, Florida and Western railway tracks, all of the right, title, interest and estate of the said Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, in and to such lands in Bolton street, preserving, of course, the easement of the said street railway company over said land for its railway purposes.

e. It was deemed by the committee to be a matter of great im-

portance to the people of Savannah that Price street should be opened from one end to the other as a driveway, the same being a very narrow street, and upon which no railway track should be laid, and in view of the fact that the plan adopted by the committee affords ample street railway facilities to the residents of this section of the city, the committee insisted, as one of its conditions, that the railway company should remove its tracks from this street.

f. The fare to be charged from any point on said street railway system to any point on the same within the limits of the city of Savannah shall be five cents (5) for each passenger so conveyed upon a continuous passage, by day or by night, proper transfer or
52 transfers to be given such passengers at all intersecting points, this being intended to cover the said street railway system as composed of the lines of petitioner, as well as those of the City and Suburban Railway Company, and of any other lines which may be hereafter acquired or operated by said petitioner within the limits of the city of Savannah.

g. The said railway company is to procure from the City and Suburban Railway Company a conveyance to the mayor and aldermen of the city of Savannah, free of cost, of all the right, title, interest and estate of said last named railway company in and to that portion of Whitaker street which runs through the City and Suburban Railway stables property, lying between Second and Fourth streets, preserving, of course, the easement of the said railway company over said land for its railway purposes.

The railway company accepted these terms, upon the express condition, however, that, in consideration of all of the foregoing and of the benefits accruing to the mayor and aldermen of the city of Savannah — to the public, especially in the removal of the tracks from that portion of Price street extended from St. Julian street to Duffy street, at the instance and request of the city, should any other railway company desire to occupy said portion of Price street and the mayor and aldermen of the city of Savannah should grant permission to do so, such railway company shall pay to the mayor and aldermen of the city of Savannah six (6) dollars per running foot for so much of said portion of Price street as may be occupied by the tracks of the same, which sum of money shall be paid over by the mayor and aldermen of the city of Savannah to the said Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, its successors or assigns. The condition was considered by the committee as just and equitable and was agreed to as such.

Wherefore this committee recommends that the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, be authorized to readjust or cause to be readjusted the lines and tracks of said railway system, in accordance with the aforesaid plan, as adopted
53 by this committee, a map of which is filed with this report, and to that end the said railway company be required to take up and remove tracks from the streets or sections of the streets

which under said plan will be no longer needed for railroad purposes; to construct new tracks on the streets or sections of the streets as called for by said plan; to construct and complete the double tracking contemplated by said plan; to take up and remove, or cause to be taken up or removed, the turnouts and switches contemplated by said plan; to put in and construct such turnouts, curves and switches as may be required in perfecting said plan; and to make such other minor changes in the tracks of said system of street railroad as may be necessary to perfect the said plan; the entire work to be under the direction of the committee on streets and lanes and of the city engineer.

Before any steps shall be taken by the railway company towards putting said plan into operation the said company shall signify in writing to the mayor and aldermen of the city of Savannah its acceptance of the terms and conditions imposed upon it by this report, and shall, additionally, bind itself in a manner satisfactory to the city attorney that it will promptly and in good faith perform its several obligations in the premises. All the lines provided for in the foregoing plan shall be regularly operated upon reasonable schedule by said railway company, unless at any time the operation of any portion of the same shall be discontinued by authority of the mayor and aldermen of the city of Savannah.

T. J. DAVIS, *Chairman.*
W. F. REID, *Alderman.*
JOHN W. SMITH, *Alderman.*
S. KROUSKOFF, *Alderman.*
W. W. OWENS, *Alderman.*

The ayes and nays being called for, the vote resulted as follows: Ayes: Weil, Charlton, Davis, Reid, Owens, Krouskoff, Smith, Hull,—8. Nays: Guckenheimer, Wylly,—2.

This agreement entered into this — day of April in the year 1898, between the Mayor and Aldermen of Savannah and the Savannah, Thunderbolt & Isle of Hope Railway, a corporation of said State and county, witnesseth:

54 Whereas, heretofore, to wit, on November 4th, 1897, a contract was entered into by and between the above named parties, readjusting the lines of street railway in the city of Savannah; and

Whereas, it is mutually desired that said contract should be modified in certain particulars:

Therefore, in consideration of the increased facilities which will be furnished to the public by the removal of switches and dispensing with tracks in the streets hereinafter referred to, and the convenience to the said railway in operating its lines, it is mutually agreed by and between the Mayor and Aldermen of the City of Savannah, party of the first part, and the Savannah, Thunderbolt & Isle of Hope Railway, party of the second part, that said contract be

changed in the following respects, and to the following extent; and the provisions hereof shall be embodied in and become a part of said contract:

First. The railway company shall remove its switches or side tracks in Broughton street, and shall run a single straight track in place of the same, and shall pave with asphaltum the space outside of the rails where the pavement is removed, from end to end of the track in said street, including the space formerly occupied by switch or side track.

Second. The railway shall not remove its tracks from Duffy street, and shall not place a double track on Anderson street, nor in that southern portion of East Broad street where there is now only a single track, nor in that western portion of Bay street between Barnard and West Broad streets. The switches in Duffy street are to be taken out by the railway as soon as the guage is changed so that it can be operated in connection with Anderson street.

Third. The railway company shall extend its track on Duffy street to East Broad street, and connect it there by a suitable curve or curves with the track of East Broad.

Fourth. In all other respects, except as herein expressly provided, the said contract of November 4th, 1897, shall remain in full force.

55 Fifth. This agreement is made by the mayor and aldermen of Savannah in council assembled and by the board of directors of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah; the action of the said mayor and aldermen being evidenced by their public records and minutes, and that of the said railway being signified to the mayor and aldermen by the proper officer in writing under the seal of the said railway.

This agreement made between the Mayor and Aldermen of the City of Savannah, party of the first part, and the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., party of the second part, witnesseth:

That for and in consideration of the mutual convenience and advantage to the two parties above mentioned, the contract of November 4th, 1897, between them, readjusting the lines of street railway in Savannah, Ga., which has been subsequently modified, be and the same is hereby further modified and changed as hereinafter provided, and the terms of this agreement shall become a part of said contract of November 4th, 1897.

First. The line of railway of the City and Suburban Railway of Savannah, Ga., shall be extended southward on Barnard street, from Second street to Tenth street, and eastwardly through Tenth street from Barnard street to Whitaker street, to its intersection with the present line at that point and the right to lay down, construct, maintain and operate said railway through said streets as before stated is granted, subject to the control and regulation of the said

mayor and aldermen, the same as other lines or railway as provided in said contract of November 4th, 1897.

Second. The line of railway on Second street from Barnard to Whitaker shall be taken up and removed.

Third. In all other respects, except as herein expressly proviced, the said contract of November 4th, 1897, and modifications of the same heretofore made shall remain in full force.

Fourth. This agreement is made by the mayor and aldermen of Savannah in council assembled and by the board of directors
56 of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah; the action of the said mayor and aldermen being evidenced by their public records and minutes, and that of the said railway being signified to the said mayor and aldermen by the proper officer in writing under the seal of the said railway. Done this July 27th, 1898.

The petition of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., to the mayor and aldermen which ended in the contracts above set forth, dated June 29th, 1897, and attached to the contract.

1. The petition of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., respectfully shows:

That it is the owner of an extensive system of street and railway in and around the city of Savannah; that in addition to the lines originally owned by it, it has recently acquired and now operates the lines and franchises of what was formerly known as the Electric Railway Company of Savannah.

2. That for the purpose of operating its railway more economically and to better advantage and at the same time affording more adequate facilities to the public, your petitioner desires to readjust its several lines by removing, in some instances, portions of its present tracks and in other instances building certain additional and connection-, and by these means to establish a more complete system and one better adapted to existing and future requirements, and which while enabling this petitioner to handle its business with more ease and economy, will, in consequence thereof, also enable it to afford the public better accom-odation and service.

3. That in making such proposed changes, if permitted by council to do so, it will be incumbent on your petitioner to expend a large amount of money.

That it is the desire of your petitioner to confer with the municipal authorities looking to the consum-ation of an arrangement whereby the readjustment of its lines can be accomplished on such equitable terms and conditions as may be mutually satisfac-
57 tory and beneficial to all concerned, and to this end your petitioner respectfully prays that this application may be referred to a committee, which may be authorized to meet your petitioner and its counsel so as to formulate, subject to your approval, a

satisfactory arrangement in the premises between the city and petitioner.

Testimony of James H. Johnston.

I am president of the City and Suburban railway and treasurer of the Savannah, Thunderbolt & Isle of Hope railway. Under the contract of November 4th, 1897, about $10,000 was paid by the railroad company to the city. The railroad paid to the city about $7,000 to acquire a portion of Whitaker street. (Memorandum affidavit of witness, handed to him.) They paid $2,900 to the city for land they wanted. It shows in cash. Cash value probably would be a better term. They bought that land for the city. Barnard and Seventh streets, $7,288, is the next item. They conveyed on Barnard street about 17 or 19 feet in width and somewhere about five hundred feet in length. The value of it was $7,288. They also conveyed to the city a strip of land valued at $720.00. That was the whole width of the street I think, except what was necessary for tracks. The worth of the land was $10,908. I know of another railroad using streets in Savannah; the Central railroad. They use all of River street; they use a couple of thousand feet on Bay street; they use a portion of St. Julian street; and they use a part of Randolph street. The kind of business they do is transporting produce from their railroad terminus to these different places where they have side tracks. And then they haul things from one side of the city to the other on this track like the drays used to do. It is a local business altogether; all done within the corporate limits. They use a different style engine on these local tracks from the engine they use on the main line. They use on these tracks switch engines. They don't use passenger or freight engines on these local tracks; they use engines devoted to local business.

58 Cross-examination:

Q. The Central railroad is not a street railroad, is it?

A. It is a railroad on a street. If that is not a street railroad, I don't know what a street railroad is. The railroad I refer to was formerly the Central Railroad and Banking Company of Georgia, and is now the Central of Georgia Railway Company. I have never known it to charge for transporting passengers from one point in Savannah to another point in Savannah over the streets of Savannah. I never heard of their carrying passengers in Savannah. River street is used for local business entirely. They transport down River street freight that comes from the outside of Savannah; from points outside of Savannah. Freight that comes from other points to its depot, but they charge a local price for it. What I mean by a local price is, they charge for transporting goods from their regular depot to these various places on River street. All of it is freight which comes from points outside of the city of Savannah. They do

the business that drays used to do in former years. My affidavit shows correctly the different amounts paid by the railroad company under this contract. This is correct. That is my signature to that petition. That is the petition upon which the contract with the city was based. That petition started the negotiations. It was the basis of the arrangement. This petition sets forth, "That the Savannah, Thunderbolt & Isle of Hope railway shows that it is the owner of an extensive system of street and suburban railway in and around the city of Savannah; that in addition to the lines originally owned by it it has recently acquired and now operates the lines and franchises of what was formerly known as the Electric Railway Company of Savannah." That statement is correct. "Second, (reading from the petition) that for the purpose of operating its railway more economically and to better advantage and at the same time affording more adequate facilities to the public, your petitioner desires to readjust its several lines by removing, in some instances, portions of its present tracks and in other instances building certain additions and connections," etc. That was the purpose of this
59 arrangement. This money that the railroad paid was not exactly paid for lands that the city did not own and that the public did not own and which was necessary in order to carry out this plan of readjustment. The city desires these lands for the public; it was not necessary for any readjustment of our lines at all. In order to give us the lands that we desired and in order that we could pursue the course we desired, it was necessary for the city to condemn certain lands, and we agreed to make the city whole as to that and the railroad company paid for those condemnation proceedings for land between Second avenue and on Barnard and Anderson streets that is not down there. That was several thousand dollars. They are not in that memorandum showed me just now. This item in the affidavit (shown the witness by counsel) I understand is the value of lands on Barnard street that was given up to the city for the purpose of making the street wider. The Savannah, Thunderbolt & Isle of Hope railway and the City and Suburban railway paid to the city $2,900 in cash, and conveyed to the city land for Whitaker street and the east side of Barnard street. That was a strip of land between what is known as Third and Fourth streets, about 350 feet; then the other on Barnard street between Seventh and Eighth street, that is a little over 200 feet, that is the reason I said it was 16 or 19 feet wide by 500 feet. That was given to widen up that street.

Q. You say, Captain, that you paid to the city $2,900 in cash, and conveyed to the city land for Whitaker street, east side of Barnard street, and on Barnard valued at $7,288? Well now, is it not true that in order to give you the streets that you needed for this readjustment that it was necessary for the city to put itself to considerable expense to condemn the land for these streets?

A. We paid for it afterwards. We paid for all of it. We paid for what I told you. We paid in addition to that for streets that

were not opened. I am certain about that. I did not say that the city did not pay anything. That piece between Whitaker and Bull; you will recollect there is a piece there for which $3,300.00 or $3,400.00 was paid. We paid one-half of it. We paid also
60 one-half for another piece that I was telling about, between Whitaker and Anderson and Third streets. They are not in there. The Savannah, Thunderbolt & Isle of Hope railway runs the lines of the City and Suburban railway. It is under one management and under the name of the Savannah, Thunderbolt & Isle of Hope railway. I don't know of any other street railway in Savannah. The bulk of the income of our company is derived from the use of the streets of Savannah in the transportation of passengers in Savannah from one point in Savannah to another point. The Savannah, Thunderbolt and Isle of Hope railway has one million and a quarter in bonds and one million in stock. We have not managed to pay the interest on our bonds. We are behind in the neighborhood of forty thousand dollars. We have paid nothing on the stock. The interest not paid on the bonds amounts to between forty thousand and fifty thousand dollars in four years. The interest on the bonds is four per cent. and in four years we have run behind forty thousand or fifty thousand,—it might run sixty thousand,—I cannot tell exactly. This is an estimate. The interest ought to be paid quarterly. It is twelve thousand, five hundred dollars a quarter. I do not know what the bonds are worth on the market. I do not know what the market value is. There are two sets of bonds. There is a City and Suburban bond. You can get a quotation of that bond from the papers; they are worth over par. They amount to two hundred and fifty thousand. The balance are the bonds of the Savannah, Thunderbolt & Isle of Hope railway. I cannot say what is the gross income of these two roads. Can not give an estimate; have no idea. We manage to pay running expenses and part of the interest on the bonds. I think the City and Suburban bonds are worth above par. I could tell you what the gross income of the two roads is if I had known you were going to ask me that question; I could have been prepared. I did not know you were going to ask me that question. I can not give an estimate. I should say not less than one hundred and eighty thousand, and between that and probably two hundred thousand. I don't think it is over two hundred thousand
61 for last year. It has been increasing rather than diminishing. By gross income I mean without any deduction for betterments or running expenses or anything else. Not net. My idea is that it is between one hundred and eighty and two hundred thousand.

Re-direct examination:

The total mileage of the Central of Georgia railway in the streets of Savannah, I should say, is nearly five miles.

Re-cross examination:

When I said I estimated that we were behind in the payment of interest between forty and fifty thousand dollars, I meant up to the 1st of July, the first of this month. I believe the securities and stock are owned chiefly by one gentleman.

Charter of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga.

To all to whom these presents may come, Greeting:

Whereas, in pursuance of an act of the General Assembly of the State of Georgia, approved December 17th, 1892, and the amendments thereto, approved December 18th, 1894, and the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., the stockholders in the same being

James H. Johnston	Residence	Savannah, Ga.
Edward J. Thomas	"	"
Luke Carson	"	"
Charles S. Hardee	"	"
John N. Herrimann	"	New York, New York.
Henry Parsons	"	"
George Parsons	"	"
Pope Barrow	"	Savannah
Herman Myers	"	"
Jacob S. Collins	"	"
Jacob Paulsen	"	"
W. J. Lindsay	"	"
William Kehoe	"	"
G. G. Ely	"	"

having filed in the office of the secretary of state a certain petition seeking the formation of a corporation by adopting the provisions of the above stated acts, said corporation to be known as the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., with a capital stock of one million dollars ($1,000,000) for the purpose of constructing, equip-ing, maintaining and operating a railroad in Chatham county, Georgia, from Sandfly Station by way of
62 Thunderbolt to Savannah, and upon and along the following streets in the city of Savannah, namely, Bolton street, Habersham street, Broughton street, St. Julian street, Price street, Bryan street, Duffy street, Cemetery street, Robert street, South Broad street, now Oglethorpe avenue, Montgomery street, President street, and a line through the market, Gwinnett street, Ott street, Anderson street, Lovers lane, East Broad street, Bay street, West Broad street, Liberty street, Twelfth street, Estill avenue, the bridge over the right of way of the Savannah, Florida and Western railway, Randolph street, Indian street, West Boundary street, the

bridge across the Ogeechee canal at the Central Railroad wharves, Barnard street; and having complied with the statute in such cases made and provided, therefore the State of Georgia grants unto the above named persons, their successors and assigns, full authority, by and under the said name of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., to exercise the power and privilege of a corporation for the purpose above stated, subject to the provisions of article 4 of the constitution of this State and all the laws governing railroad companies of force at the date of this certificate, or that may hereafter become of force, either by constitutional or statute law or by any rules and regulations of the railroad commission of this State, or otherwise which govern and control the operation of railroads in this State.

And the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., having as aforesaid filed its petition to adopt the provisions of said act approved December 17th, 1892, and the said amendments approved December 18th, 1894, and all other amendments of said act, the said persons, the stockholders in the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., are a body corporate, with all the powers, duties, and liabilities of said act and the amendments thereto.

This charter to continue in force for one hundred and one years from this date.

In witness whereof these presents have been signed by the
63 secretary of state, and to which is annexed the great seal of the State at Atlanta, Georgia, this fourth day of June, 1897.

[Great Seal of the State of Georgia.]

A. D. CANDLER,
Sec. of State, State of Ga.

By agreement of counsel the following statement of facts was admitted as evidence: The mileage of the City & Suburban Railway of Savannah, Ga., and of the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., in the city of Savannah, which was in use, amounted to nineteen miles (19), and that the Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga., and the City & Suburban Railway of Savannah, Ga., mileage combined should be treated as one for the purpose of this case, and no objection to be made on account of the fact that the City & Suburban railway technically was owner of part of the nineteen miles (19), it being desired that the case should be decided upon its merits. The two companies are operated by the same management and control. The tax ordinance, so far as it related to the tax question on street railroad companies, and the amendment thereto, are correctly copied in paragraph one (1) of the first amendment to the plaintiff's petition and in paragraph two (2) of the defendant's answer. The execution issued for a specific tax and this tax was among the specific taxes mentioned in the tax ordinance referred to in the pleadings. For

the purposes of this case the mileage of the City & Suburban railway and of the Savannah, Thunderbolt & Isle of Hope railway is to be treated as one, the same as if it all belonged to the Savannah, Thunderbolt & Isle of Hope railway, the controlling and operating road, and that the charge for the privilege of using the streets may be made against one for both.

Endorsements on the back: In the superior court of Chatham Co., Ga. June term, 1901. The Sav'h, Thunderbolt & Isle of Hope Ry. of Sav'h *vs.* The Mayor and Aldermen of Sav'h. Motion for new trial. Brief of evidence filed in office July 20th, 1901. James K. P. Carr, clerk, S. C. C. C.

The hearing of this motion is continued subject to be called
64 up at any time on one day's notice. July 27th, 1901. R. Falligant, judge.

The grounds of motion for new trial approved. Sav'h Ga. August 10, 1901. R. Falligant, judge.

The within brief of the evidence on the motion for a new trial in the case of The Savannah, Thunderbolt & Isle of Hope Rwy. *vs.* The Mayor & Aldermen of Savannah is approved. August 10, 1901. R. Falligant, judge, E. J. C. of Geo.

Order Refusing a New Trial.

The within motion for a new trial having been regularly continued until this day, and being now called up in its order, after consideration of the same, it is ordered and adjudged that the motion be denied and a new trial refused. In open court. Aug. 10, 1901.

R. FALLIGANT,
Judge E. J. C. of Geo.

GEORGIA,
Chatham County.

Clerk's office, superior court.

I, James K. P. Carr, clerk of said superior court, do hereby certify the above and foregoing fifty-nine pages in typewriting to be true and correct copies of such parts of the original record on file in this office as are specified in the bill of exceptions as necessary to be transmitted to the supreme court of Georgia in the case of The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Ga. *vs.* The Mayor and Aldermen of Savannah.

In testimony whereof, I have hereunto set my official signature and affixed the seal of said court this 24 day of August, 1901.

[SEAL.] JAMES K. P. CARR,
Clerk Superior Court, Chatham County, Geo.

Indorsed on back: No. 14 Eastern. October term, 1901. S. T. & I. H. Ry. *v.* Mayor etc. of Savannah. Transcript. Filed in office Aug. 26, 1901. Logan Bleckley, D. C. S. C. Ga.

SAVANNAH, THUNDERBOLT AND ISLE OF HOPE RAILWAY
v.
65 MAYOR AND ALDERMEN OF SAVANNAH.

By the COURT: A judgment denying an interlocutory injunction, when the same depends entirely upon questions of law, is, upon its affirmance by the supreme court, conclusive against the plaintiff in error as to every such question made by his assignments of error, though there be no express reference to all of them, either in the opinion filed or in the synopsis of the points decided.

Submitted March 1, decided April 2, 1902.

FISH, *J.*:

The Savannah, Thunderbolt and Isle of Hope Railway filed, in the superior court of Chatham county, an equitable petition against the mayor and aldermen of the city of Savannah, praying that the defendants be enjoined from collecting from the plaintiff a business or privilege tax levied by the municipal authorities upon street-railway companies doing business within the limits of the city, alleging that the city had no power or authority in law to levy such a tax. In an amendment to the petition it was alleged: "All railroad companies stand upon the same footing, as regards taxation. The said mayor and aldermen of Savannah have discriminated against your petitioner and the City and Suburban Railway of Savannah, Ga., in that they have not imposed this tax upon any other railroad company doing business in Savannah, although there are other railroad companies who do business in the city, and use the streets of the city by consent of the mayor and aldermen." It appears from the record in this case when it was here before that, upon an interlocutory hearing, the affidavit of H. M. Lofton was put in evidence by the plaintiff. A part of this affidavit was as follows: "That the Central of Georgia Railroad is now and has been for years using some of the streets of Savannah, particularly River street, by laying down its tracks longitudinally thereon, and operating its trains upon it, by consent of the mayor and aldermen of the city of Savannah. This deponent is informed and believes that
66 no attempt has been made to impose any tax upon said Central of Georgia Railway for the privilege of using said streets. They use nearly a mile of River street with their railway track laid longitudinally thereon." The court refused to grant an interlocutory injunction. The plaintiff sued out a writ of error to this court, assigning error upon such refusal, and the judgment of the lower court was affirmed. 112 Ga. 164. Afterwards the case came on for final trial before a jury, on the same pleadings. Lofton was intro-

duced as a witness by the plaintiff, and his testimony was, in substance, the same as that contained in his affidavit submitted upon the interlocutory hearing. Johnson, a witness for the plaintiff, testified, in substance, that the Central Railroad used all of River street and parts of Bay, St. Julian and Randolph streets, in transporting produce from the terminus of such railroad to places where it had side-tracks, hauling produce from one side of the city to the other, like drays formerly did; that it was a local business altogether, and done within the corporate limits, a different engine being used on these local tracks from the engine used on the main line; freight thus hauled being that which came from other points outside of the city of Savannah to its main depot, but local prices being charged for transporting it from the regular depot to various places on River street. The fact that the Central of Georgia Railway used a part of River street as stated in Lofton's affidavit, which was used on the interlocutory hearing, was not controverted upon that hearing, nor was his testimony, or that of Johnson, upon the final trial, in reference to the use of the streets of the city by that railroad company, contradicted. There was no issue of fact on that question made at either trial. Upon the final trial the court directed a verdict for the defendants. The plaintiff made a motion for a new trial, which being overruled, it excepted, and the case is now before this court for the second time.

One of the grounds of the motion for a new trial was, that the verdict was erroneous, because the tax in question was not uniform; and counsel for the plaintiff in error in his brief, says:

67 "The only question left open by the previous decision of this court was the contention of the plaintiff in error that the tax in question violated the rule requiring uniformity, prescribed by the constitution in § 5883 of the Code. It now appears that there is another railroad company doing a purely local business in the streets of Savannah which is not taxed when the plaintiff in error is taxed." He says further: "This question was not clearly made when the case was here before, and was not passed upon by the court." We can not concede the correctness of the contention of counsel in this respect; for we think the question as to the uniformity of the tax was made when the case was here before, and that the decision of this court then rendered in the case is *res adjudicata* as to that matter. The question was made by the pleadings and uncontradicted evidence before the judge at the interlocutory hearing, and he certainly passed upon it, as one of the legal points in the case, in refusing the interlocutory injunction. When the plaintiff assigned error upon that ruling and brought the same here for review, the question was before this court for determination, and it being purely a question of law, no issue of fact being involved, the judgment of affirmance rendered by this court brings the case squarely within the ruling made in City of Atlanta *v.* First Methodist Church, 83 Ga. 448, to the effect, that a judgment of a trial court, granting or refusing an injunction, when the same depends entirely upon a ques-

tion of law, is, upon its affirmance by the supreme court, a final adjudication of such question; which decision, upon a review thereof, was adhered to in Ingram *v.* Mercer University, 102 Ga. 226, where a number of the adjudications of this court are cited in support of the proposition. The rule was again recognized in Murphey *v.* Harker, 115 Ga. 77. If a plaintiff in error makes a question by his assignment of error, he is concluded by an affirmance by the supreme court of the judgment below, although the question be not expressly mentioned, either in the written synopsis of the points decided, or in the opinion filed, in the case. See McWilliams *v.* Walthall, 77 Ga. 7. It follows that the judgment below must be affirmed.

Judgment affirmed. All the justices concurring, except Little and Lewis, JJ., absent on account of sickness.

68 Supreme Court of the State of Georgia.

ATLANTA, GA., *April* 2, 1902.

The honorable supreme court met pursuant to adjournment. The following judgment was rendered:

SAVANNAH, THUNDERBOLT & ISLE OF HOPE RY.
versus
MAYOR, ETC., OF SAVANNAH.

This case came before this court upon a writ of error from the superior court of Chatham county; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed, all the justices concurring except Little and Lewis, JJ., absent on account of sickness.

Bill of costs, $10.00.

69 ATLANTA, GA., *April* 19, 1904.

Clerk's office, supreme court of Georgia.

I hereby certify that the foregoing pages hereto attached contain the original writ of error and citation, together with true and correct copies of the petition for writ of error, bond, assignment of errors, bill of exceptions, transcript of record, and of the opinion and judgment of said supreme court, constituting the entire record in the case of The Savannah, Thunderbolt & Isle of Hope Railway of Savannah, Georgia, *versus* The Mayor and Aldermen of the City of Savannah, as appears from the records and files of this office.

[Seal Supreme Court of the State of Georgia.]

Z. D. HARRISON, *Clerk.*

Endorsed on cover: File No. 19,318. Georgia supreme court. Term No. 238. The Savannah, Thunderbolt and Isle of Hope Railway of Savannah, Georgia, plaintiff in error, *vs.* The Mayor & Aldermen of the City of Savannah. Filed May 2nd, 1904. File No. 19,318.